NATURE RIGHTS

Mihnea Tănăsescu & Miriama Cribb

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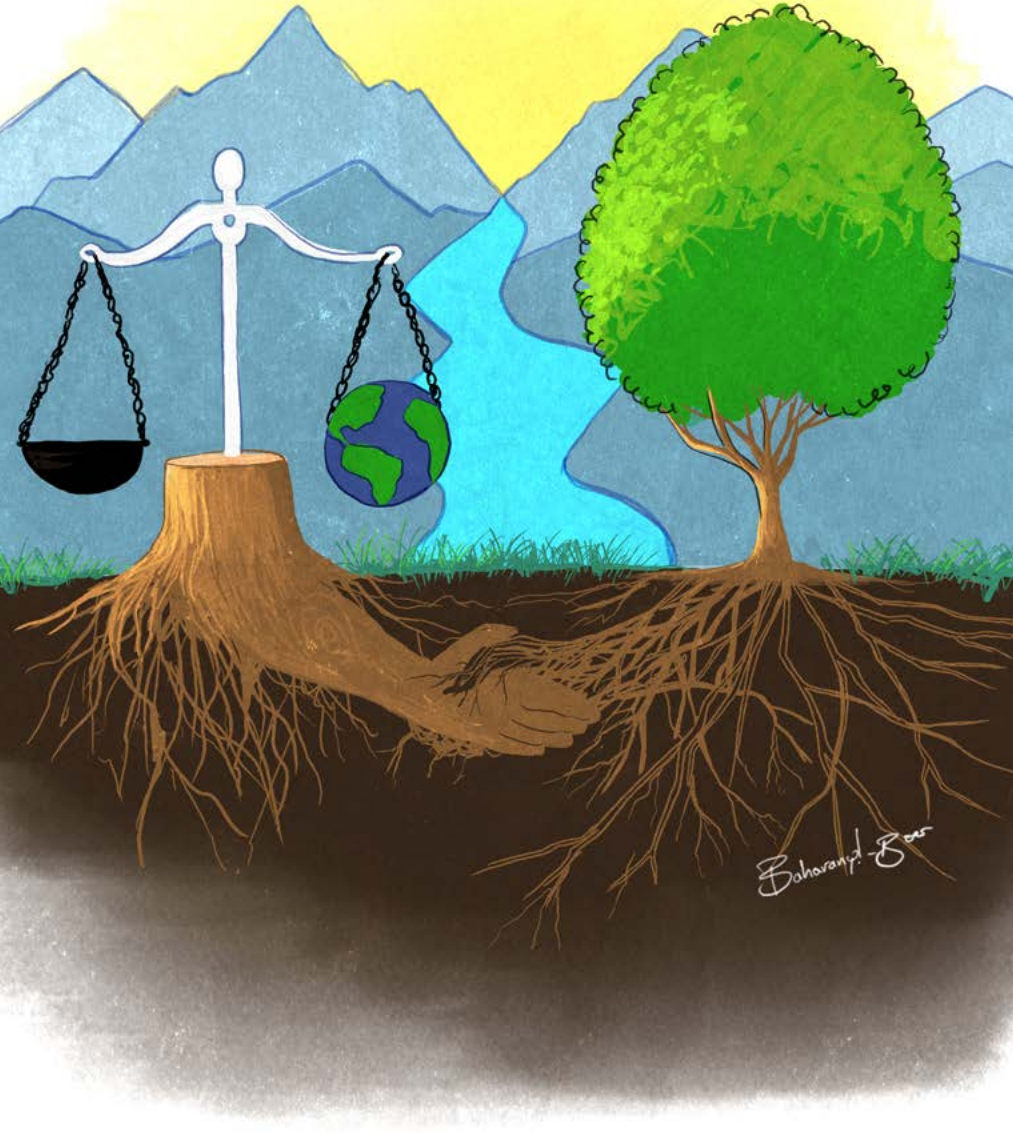

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Giving rights to natural entities—rivers, mountains, or entire landscapes—has gained traction worldwide. Traditionally, Western legal systems treat nature as property, not as a legal person capable of defending its interests or claiming damages. Under new frameworks, some jurisdictions grant positive rights to nature, such as the right to maintain evolutionary processes or to be restored when harmed. Others confer full legal personality on natural features. These innovations have sparked vigorous academic debate and are increasingly accepted in mainstream discourse. This text explores the foundational concepts of nature's rights and the challenges that emerge in specific cultural and linguistic contexts.

Concept

The idea of granting nature rights was absurd until not too long ago. Saying that it was absurd simply means that it did not designate any practice that could be made sense of. Since the early 20th century, however, the rights of nature started making a whole lot of sense, because they are part of a wider process of rethinking relationships with the environment. Within this process, the issue of how nature is legally and politically represented cannot be ignored, and the hegemony of rights in the era of nation states makes the juxtaposition nature / rights seem sound (Tănăsescu 2022).

The quick ascendancy of the rights of nature does not mean that there is a universal understanding of what this means, nor

is it clear how these rights can coexist with other political strategies. It is understandable that, in the early stage of expansion, attributing rights to nature creates confusion. Hopefully we can insert some clarity in what follows.

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First, under most legal systems today, natural entities do not necessarily feature as legal persons in themselves, and therefore cannot sue in their own name, or claim forms of compensation. In such legal systems, natural entities do not count in the same way as other legal persons (like corporations, for example). However, since the 1970s, new understandings are emerging, and this has become concrete in 2008 with the writing of a new Ecuadorian Constitution. This constitution included - for the first time in history - rights for all Ecuadorian nature, to its own cycles and functions, and to restoration.

However, the Ecuadorian Constitution does not give any specific definition to nature; and therefore, the concept can apply to many different aspects for as long representatives of nature provide convincing arguments. In addition, the rights that are given to nature – respect, restoration, evolution - are also vague. Despite this vagueness however, rights of nature are granted and must be weighed against other rights. Furthermore, since 2019, the Ecuadorian rights of nature have been interpreted by the Ecuadorian Constitutional Court in detail. And this has set the basis for a fascinating jurisprudence that, despite the vagueness of the constitutional formulation, has resulted in a lot of normative content (Kauffman and Martin 2021, Tănăsescu et al 2024)

Besides the specific recognition of the legal personality of nature pioneered in Ecuador, two other elements deserve specific

attention. First, Ecuadorian legal systems recognise that nature rights are deeply connected to indigenous philosophies, translating a harmonious view of the interaction between nature and humans. Second, the representation of nature's rights by people is often understood as a relationship of *guardianship*. Differently said, nature with rights should have guardians representing its interests.

These three elements – rights, indigenous concepts translated into legal personality, and guardianship – also reemerge in other contexts and present themselves in different combinations. This has inspired authors to build typologies, for example laws that deal with instituting legal personality only, as opposed to ones that give specific positive rights (O'Donnell et al 2020, Kauffman and Martin 2021).

Words and concepts in indigenous languages have not necessarily been explored in detail, even though they are often mentioned.

From this perspective, Ecuador represents a case of positive rights, as it explicitly grants several rights to nature. However, it does not constitute a guardianship model, since the Constitution does not designate any individual or group to act in that capacity. The Ecuadorian example is however often linked to indigenous legal traditions, given that nature is recognized as a legal person through the Constitution.

Considering the above discussion, it seems as if the attribution of rights to nature has become mainstream. However, this is far from daily reality. Moreover, also within the scholarly community accepting this principle, there is a lot of debate. For example, scholarship in relation to this topic has mostly been presented in English or Spanish. As a result, words and concepts in indigenous languages have not necessarily been explored in detail, even though they are often mentioned.

In the interest of bringing some clarity while insisting on irreducible complexity, we want to take a closer look at the case of *Te Awa Tupua* / Whanganui River in Aotearoa, New Zealand. Doing so will help us show how concepts like guardianship or even legal personality are not always in line with indigenous conceptions, nor necessarily the best strategy for protecting the environment.

In 2017, the *Te Awa Tupua* river became a legal person through an Act of Parliament. Several authors have elaborated excellent accounts of this process (see Finlayson, 2019; Finlayson & Christmas, 2021). Most literature has presented this as an attribution of rights to nature, although a minority of scholars argued that this legal decision would better be understood as the attribution of indigenous rights, not necessarily connected to nature as such. Overall, most authors have agreed that this case is an example of a guardianship model rooted in indigenous, specifically Māori, traditions.

Interestingly, the dynamics around *Te Awa Tupua*/ Whanganui River also allow us to illustrate the importance of language in the interpretation of nature. The translation between *Te Reo Māori* and English has been a point of contention since the early days of colonialism, ever since the *Treaty of Waitangi* (1840) was signed. Inaccurate choices of English terms for Māori concepts led to misunderstandings and biased interpretations. There are therefore significant differences of meaning between the English and Māori versions of the treaty. These fields of tension remain in contemporary times and are present in the legal decision that was taken in relation to the *Te Awa Tupua*/ Whanganui River. Terms like '*guardianship*' or '*rights*' or '*legal person*' are for example supposed to represent certain Māori concepts. But what happens if we stick with the Māori terms instead, and resist the temptation to align them to conventional concepts and languages?

In what follows we will reflect on this. Of course, our writing itself is not in *Te Reo* – the indigenous language we write about

- so nuances may be lost when translating Māori concepts into English. To address this, we will refrain from assigning a single equivalent to each key term, choosing instead to explore the concepts that each word animates and the relationships it evokes.

Case Study

The international literature on *Te Awa Tupua*—the name given to the new legal status of the Whanganui River—reflects a wide range of ideological positions and is approached through diverse disciplines, frameworks, and languages. Across this body of work, scholars seek to deepen understanding of what *Te Awa Tupua* is and what it strives to achieve. Yet challenges emerge when concepts are overstretched, stripped of linguistic nuance, or detached from their philosophical foundations and cultural roots (McNatty & Roa, 2002).

The Indigenous communities of the river are collectively known as the *Whanganui iwi*. For these populations, there is a risk that the concepts within *Te Awa Tupua* may become detached from their community contexts (Smith et al., 2016). Indigenous concepts translated into notions of legal personality, rights, rights of nature, and guardianship represent efforts to convey the values, intentions, and guiding principles of *the Whanganui iwi*. As tribal leaders explain, these efforts aim to offer the closest possible approximation of the worldview held by the *Whanganui iwi,* though the concepts themselves do not necessarily originate from, or belong to them.

To bring greater clarity, we will examine three conceptual areas of *Te Awa Tupua*—how they were developed and how they relate to the actual intentions, values, and drivers of the *Whanganui iwi*. These areas concern the ideas (1) that legal personality translates Indigenous worldviews, (2) that *Te Awa Tupua* constitutes a case of attribution of rights-to-nature, and (3) that the local Indigenous people are now the guardians of the river.

Let us start with the first dimension. *Te Awa Tupua* is often cited

as an example of Indigenous concepts translated into legal personhood. While the 2017 *Te Awa Tupua Act* is indeed pioneering and represents a significant legal development, it remains, fundamentally, a Crown (New Zealand government) institution designed to better understand and apply Indigenous paradigms (Cribb et al., 2024). As *Whanganui iwi* leaders remind us, legal personhood is merely a vehicle to carry a new legal status—nothing more. This means that the *Whanganui iwi* grounded their negotiation strategy with the Crown in the traditional Māori relationship with the river (Takacs, 2021). The Act of Parliament conferring legal personhood reflects this. Legal personhood was the most suitable vehicle to achieve this goal because it goes beyond a purely symbolic gesture, instead harnessing the compulsory power of law (Watson et al., 2018).

It is clear, however that the *Whanganui iwi*'s perception of the river as an ancestor predates the legal recognition of its personhood. What substantiates the view of the river as an ancestor is *kawa*—or, for the purpose of this discussion, Indigenous law. According to the *Te Awa Tupua Act*, four *kawa* constitute the value system of *Te Awa Tupua*: the river as the source of spiritual and physical sustenance; the great river flowing from the mountains to the sea; "I am the river and the river is me"; and the idea that the small and large streams flowing into one another form one river. While these *kawa* are provided in English and often translated into terms such as *values* there is no true English equivalent for *kawa*. It is therefore difficult to define *kawa* without the people to whom it belongs and from whom it derives its power.

As explained elsewhere (Cribb et al., 2024), the deliberate inclusion of *kawa* in the *Te Awa Tupua Act* represents an assertion by the *Whanganui iwi* to resist the co-option, reinterpretation, and reduction of *kawa* by courts, legislators, and policymakers. If the *Te Awa Tupua Act* grants jurisdiction for *kawa*, then no national court or Parliament has the authority to determine its meaning or application without the involvement of the people who hold the appropriate knowledge of these *kawa*.

Les us now turn to the second dimension. *Te Awa Tupua* is often interpreted as an example of rights—particularly the rights of nature. It is declared a legal person possessing all the rights, powers, duties, and liabilities of a legal person, which are exercised by and are the responsibility of *Te Pou Tupua*. From this definition, it is clear why *Te Awa Tupua* is frequently cited as an instance of the rights of nature: the river is granted the same rights as a legal person.

However, this interpretation has been increasingly contested, including in our own work, where we argue that *Te Awa Tupua* is better understood as a model recognizing Indigenous rights (Tănăsescu, 2022; Cribb et al., 2024). This is because the *Te Awa Tupua Act* represents the culmination of over a century of efforts by the *Whanganui iwi* to redress the injustices of colonization and reclaim their rights and responsibilities toward the river (Zartner, 2021). *Te Awa Tupua*, therefore, affirms the State's obligations regarding Indigenous rights and authority—particularly jurisdiction over Indigenous law (*kawa*).

This argument seems even more important given that the concept of rights can be misunderstood within settler constructs of the river—particularly in relation to property rights, ownership, and tenure (Finlayson, 2019). Within Māori law, however, lies the concept of responsible water use, which takes precedence over the right to use what one possesses (Durie, 2018). For the *Whanganui iwi*, rights do not exist in isolation; they are always considered alongside interests and, more importantly, responsibilities. Consequently, *Te Awa Tupua* grants the *Whanganui iwi* the rights to exercise authority and responsibility over the river, rather than merely conferring legal rights upon the river itself. This perspective is perhaps best understood as legal personhood serving as a mechanism to reset human relationships with nature—not to manage the river, but to manage how people interact with it (Ruru, 2017).

Now we turn to the final dimension: the role of *Te Pou Tupua* as the statutory guardian representing the interests of *Te Awa*

Tupua (the river and all its physical and metaphysical elements from the mountains to the sea). As part of the *Te Awa Tupua Act*, a new body—*Te Pou Tupua*—was established to uphold the river's newly recognized legal status. In the law, *Te Pou Tupua* is described as the human face of *Te Awa Tupua*. It possesses the full capacity and powers necessary to carry out its functions in accordance with the Act. Furthermore, it is a joint role, held by two individuals: one appointed by the *Whanganui iwi* and the other by the Crown.

But let us delve more deeply in the notion of guardianship that is attributed to *Te Pou Tupua*. First, the only mention of *guardian* in the *Te Awa Tupua Act* refers to *kaitiaki*—a spiritual guardian found within the river, particularly in its rapids, who is responsible for the life force of that area. For the *Whanganui iwi*, the term *kaitiaki*, often translated as *guardian*, does not apply to humans but is reserved for the spiritual or supernatural realm. Humans are not necessarily considered capable guardians; this role is understood to belong to supernatural beings (Takacs, 2021).

However, when translated into Western law, it is perhaps understandable that one might associate the concept of guardianship with the role and purpose of *Te Pou Tupua*, and with the *Te Awa Tupu*a model more broadly. But the details matter. For instance, a closer look at *Ruruku Whakatupua*—the Deed of Settlement on which the *Te Awa Tupua Act* is based—reveals that the role of *Te Pou Tupua* is far more complex and rooted in a tradition that has little to do with guardianship as understood in Western law.

In fact, *Te Pou Tupua*, as a concept in Māori cosmology, refers to the celestial and ancient pillar that upholds the universal order (Whanganui Iwi & The Crown, 2014). As a legal construct, *Te Pou Tupua* therefore denotes a structure ensuring that the river is governed according to a system of interconnected laws known as *kawa*, which we previously encountered and translated as *values*. Furthermore, *pou*, the middle term in *Te Pou Tupua*, can be translated as *stakes*. These were traditionally used to support and uphold the nets of the *eel weir (pā auroa),* known

as *Te Pā Auroa nā Te Awa Tupua*. Symbolically and practically, then, the framework of *Te Awa Tupua* grows from ideas rooted in traditional practices and concepts. The role of *Te Pou Tupua*, therefore, is to hold space and, in doing so, uphold the status of *Te Awa Tupua*. Seen in this light, *guardianship* is a poor approximation of the rich conceptual tapestry and practical knowledge of Māori thought.

Feeling lost? Hopefully, this moment of conceptual confusion helps you appreciate how challenging it has been for Indigenous groups to translate and defend their complex, layered languages and worldviews in *modern* terms that often erase much of this complexity. It also helps illustrate how misunderstandings can arise, despite the best intentions of those advocating for concepts such as *guardianship*, *rights*, or *legal personality*.

Attending to the nuances of Indigenous terms and concepts unsettles the automatic nature of translation. To be clear, translation itself is not the problem—it enables dialogue and, at best, mutual understanding and exchange. However, it can become a form of violence when too much emphasis is placed on the supposed equivalence between terms, practices, or concepts. Making the effort to understand terms within their own context, enriches the very possibility of mutual understanding and dialogue that translation seeks to offer. Thus, a constructive way to engage with the rights of nature is to bring together multiple voices, making the very idea of a single, unified theory both suspect and unnecessary.

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