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Trees Can't Sue (Yet): Impediments to Rights of Nature in Anglo-American Juridical Systems

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Abstract

This paper examines how Lockean concepts of private property fundamentally impede the integration of Rights of Nature (RoN) within Anglo-American legal systems. Despite mounting ecological crises and the inadequacy of conventional environmental governance frameworks, attempts to grant legal personhood to natural entities remain constrained by Lockean anthropocentric legal traditions that conceptualise nature primarily as property.

Through critical analysis of legal pluralism and evolving personhood conceptualisations, the research highlights structural barriers to meaningful ecological protection. Case studies — including New Zealand's Whanganui River and India's Ganges and Yamuna Rivers — reveal a paradoxical pattern: initiatives celebrated as ecocentric innovations often reproduce the very anthropocentric hierarchies they aim to challenge. Through critical analysis of legal personhood, this paper identifies some key impediments: the subject/object dichotomy that is embedded in Anglo-American jurisprudence, jurisdictional fragmentation that fails to accommodate the transboundary nature of ecological systems as well as fundamental rights clashes between newly recognised natural entities and entrenched property interests. These barriers are, in part, the result of Lockean frameworks requiring human-like cognitive capacities for legal recognition.

While RoN movements have achieved limited recognition through legal pluralism and personhood mechanisms, they operate within epistemic constraints that systematically marginalise non-anthropocentric understandings. The research concludes that without addressing foundational Lockean principles underpinning Anglo-American juridical systems, RoN initiatives risk reinforcing the anthropocentric paradigm they seek to challenge, rendering them symbolic rather than substantively transformative.

Key words: John Locke, jurisprudence, personhood, property rights, rights of nature

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'If Justice Douglas has his
way-O Come not that
dreadful day-we'll be sued
by lakes and hills Seeking a
redress of ills

Great Mountain peaks of name
prestigious will suddenly become
litigious

Our brooks will babble in the courts,
Seeking damages for torts

How can I rest beneath a
tree If it may soon be
suing me? Or enjoy the
playful porpoise

While it's seeking habeas corpus?

Every beast within his paws
will clutch an order to show
cause the courts besieged on
every hand, will crowd with
suits by chunks of land.

Ah! But vengeance will be sweet
since this must be a two-way
street. I'll promptly sue my
neighbour's tree for shedding all
its leaves on me.'

- John M. Naff, Jr.

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Introduction

The global ecological crisis presents an unprecedented challenge to contemporary legal systems. Ecological integrity perches upon an unstable precipice, destabilised by anthropogenic perturbations. Fragments of environmental uncertainty cascade like lithic debris, incrementally eroding the structural integrity of interconnected ecological networks. Institutional environmental governance — increasingly characterised by regulatory entropy — accelerates the progressive marginalisation of ecological resilience, systematically undermining the mechanisms that sustain planetary biodiversity.

This is the modern story of ecological decline, denoted by managerial legal systems that place human interests above all else. This story succeeds centuries — millennia — of previous ecological decline, distinguished by human abilities to fundamentally alter their immediate environments to their needs and desires. Ecological manipulation and subsequent decline are universal throughout human history — whether observing Indigenous communities on the early modern North American Great Plains, Casarabe communities in the mediaeval Amazon or the pre-Holocene megafauna-hunting communities across the world.[2]

This trajectory of decline faced a marked acceleration in the late early modern and modern historical periods (from roughly 1700 to the present day).[3] This acceleration has been interrogated by legal scholars, historians, economists and philosophers alike, concluding that its sources are multifarious and hard to pin down — shifting economic incentives are often the primary point of blame.[4] Shifting legal traditions, though, are often pinpointed too — in particular, how shifting traditions, particularly human and non-human relations, were embedded in legal systems and subsequently enforced.[5] It is in this context that contemporary environmental law enters the fray, seeking to arrest a seemingly unstoppable trajectory that fundamentally prioritises the needs of

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[2] Pekka Hämäläinen, Indigenous Continent: The Epic Contest for North America (Liveright 2022); Heiko Prümers et al, 'Lidar reveals pre-Hispanic low-density urbanism in the Bolivian Amazon' (2022) Nature 606 325; Jens-Christian Svenning et al, 'The Late-Quaternary megafauna extinctions: Patterns, causes, ecological consequences and implications for ecosystem management in the Anthropocene' (2024) Cambridge Prisms: Extinction 2 1.

[3] Dipesh Chakrabarty, 'The Climate of History: Four Theses' [2009] Critical Inquiry 35(2) 197.

[4] Andreas Malm, *Fossil Capital: The Rise of Steam Power and the Roots of Global Warming (Verso 2016); Andreas Malm, The Progress of This Storm: Nature and Society in a Warming World* (Verso 2018).

[5] Kirsten Anker et al, *From Environmental to Ecological Law* (Routledge 2022).

humankind over other species and ecosystems. Today, the limited efficacy of environmental law has long been recognised.[6] These limitations are particularly evident in Anglo-American legal systems, where environmental governance remains embedded within private property norms, which entrench an economic-first model in environmental governance structures.[7] Concomitantly, mounting research evidences that humankind is exceeding 'planetary boundaries', which at present maintain stable, 'Holocene-like' conditions that provide for basic planetary wellbeing.[8]

Rights of Nature

Legal scholars have sought and continue to seek innovative corresponding solutions. One such broad-based and multifarious solution is Rights of Nature (RoN) — the idea of granting ecosystems or species rights, and often legal personhood, to give them greater standing in and thereby protection under law. Expressed by initiatives like the River Ouse in the UK today, traced back to its roots, the RoN movement can be seen in both Indigenous cosmologies and ecological thinking.[9] It has been suggested that it may be viewed as a "form of legal hybrid; the result of transnational interactions between Indigenous cosmologies and Western rights-based ecocentric philosophy on non-human subjectivity."[10]

Christopher Stone's renowned article, '*Should Trees Have Standing?*'[11] — which suggested granting rights to natural entities, can be regarded as the Western philosophical launchpad on which literature on the subject amassed.[12] Writings were underpinned by a normative foundation that human law must serve the Earth's entire system, both humans and natural entities.[13] For the purposes of this paper, RoN is

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[6] Vito De Lucia, 'Beyond Anthropocentrism and Ecocentrism: A Biopolitical Reading of Environmental Law' [2017] 8 Journal of human rights and the environment 181, 182.
[7] Bonnie Holligan, Helen Dancer and Helena Howe, UK Earth Law Judgments: Reimagining Law for People and Planet (Bloomsbury Academic 2024) 10; Anu Lähteenmäki-Uutela et al, 'Legal rights of private property owners vs. sustainability transitions?' (2021) 323 Journal of Cleaner Production 1.
[8] Will Steffen et al. 'Trajectories of the Earth System in the Anthropocene' [2018] 115 PNAS 8252, 8252.
[9] Thomas Berry, The Great Work: Our Way into the Future (Three Rivers Press, 1999).
[10] Bonnie Holligan (n7).
[11] Christopher D. Stone, *Should Trees Have Standing? Law, Morality, and the Environment* (3rd ed., Oxford University Press 2010).
[12] Thomas Berry (n9); Cormac Cullinan, *Wild Law a Manifesto for Earth Justice* (2nd ed. Green Books 2011).
[13] Thomas Berry (n9); By 'natural entities' I am referring broadly to physical environmental entities and their accompanying ecosystems. Example: a river.

conceptualised broadly as the positioning of ecocentric values at the core of environmental adjudication. This framework derives substantially from the scholarly work of Godofredo Stutzin, a jurist based in Chile — published contemporaneously to Stone's seminal work. Stutzin, who maintained a personal commitment to environmental preservation, posited that RoN represent an ecocentric evolution in legal history.[14] He characterised them as a response to what he termed an 'ecological imperative'.[15] Stutzin contended that conferring rights upon nature necessarily 'implies overcoming the anthropocentric bias of law'.[16] This ostensibly straightforward formulation has yielded significant implications for the conceptualisation of nature's rights, and consequently, for the drafting of their legal provisions. The central thesis of Stutzin's argument — advocating a fundamental paradigmatic shift towards ecocentrism — suggests that the conferral of legal rights upon nature constitutes a requisite mechanism for solving environmental challenges.[17] This has been echoed in more recent literature like Jasper Mühre's '*Rights of Nature in Liberal Legal Systems and International Law'*, where Mühre encourages lawyers to shift towards using rights and personhood to reverse ecological decline.[18]

In 1972, RoN appeared in practice in the United States and can be seen in the dissenting judgment of Justice William O. Douglas in *Sierra Club v. Morton* 1972. In this judgment, O. Douglas made an attempt to confer judicial rights upon "environmental objects".[19] The movement continued gaining traction until 2008, when a substantial move from theoretical concept to legal reality was made through incorporation in Ecuador's revised Constitution. Its Articles outline the rights of ecosystems and their constituent species to protection against harm, but also the rights these ecosystems and their constituent species have to restoration following historical harm.[20] More recent examples which followed off the back of Ecuador's approach include New Zealand's Whanganui River, Spain's Mar Menor Lagoon, and India's

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[14] Mihnea Tănăsescu, *Understanding the Rights of Nature: A Critical Introduction* (Bielefeld: Transcript Verlag 2022) 24.
[15] ibid 25.
[16] Mihnea Tănăsescu (n14) 25.
[17] Mihnea Tănăsescu (n14) 25.
[18] Jasper Mührel, *Rights of Nature in Liberal Legal Systems and International Law Beyond Legal Anthropocentrism* (1st ed. Springer Nature Switzerland 2024) 11.
[19] *Sierra Club v Morton* 405 US 727 [1972] [741]-[743].
[20] Constitution of the Republic of Ecuador 2008 arts 71-74 recognise the inalienable rights of ecosystems to exist and flourish, give people the authority to petition on the behalf of nature, and require the government to remedy violations of these rights.

Ganges and Yamuna Rivers respectively. Against these diverse legal, political, and cultural backgrounds, RoN litigation demonstrates a consistent underlying objective: to leverage legal mechanisms as instruments to enhance environmental protection and foster symbiotic and ecologically sustainable human-non-human coexistence.[21] These legal mechanisms are mostly encapsulated in two threads: legal pluralism — the idea that competing legal ontologies and authorities can and should exist concurrently — and legal personhood, the idea of granting non-human actors — whether animate or inanimate — the privileges personhood affords.

The RoN movement, while gaining traction globally, faces resistance within systems historically anchored in anthropocentric property rights — Anglo-American legal systems in particular. This resistance manifests in questions of standing — whereby traditional requirements for legal personhood conflict with novel attempts to represent natural entities in court — and in the incorporation of multiple legal traditions. These intersecting challenges are especially evident in jurisdictions attempting to bridge Indigenous perspectives with common law frameworks, highlighting both the possibilities and limitations of integrating RoN within existing legal structures. The lack of uptake amongst Anglo-American countries in the Global North is notable.[22]

In 2024, at a UN conference in Nairobi, a UK delegate expressed the country's firm opposition to the application of RoN, asserting that rights could only be held by humans and that this was "a fundamental principle for the UK and one from which we cannot deviate".[23]

John Locke and Property Rights

This principle, and the school of thought it stems from, is partly derived from Lockean principles of property rights. Within early modern Anglo-American ontological systems, property was conceptualised as an inalienable right embedded within the

[21] Jasper Mührel (n18).
[22] Jasper Mührel (n18).
[23] Jonathan Watts, 'UK government can never accept idea nature has rights, delegate tells UN' (The Guardian 22 February 2024) <https://amp.theguardian.com/environment/2024/feb/22/uk-government-can-never-accept-idea-nature-has-rights-delegate-t ells-un> accessed 2 February 2025; Please note that what is meant by 'nature having rights' varies between contexts — this will be explored throughout the paper.

metaphysical architecture of the Christian God, wherein human possession functioned as a mediating force between terrestrial and celestial spheres, fostering a symbiotic relationship between human agency and natural processes.[24] It wasn't until the eighteenth century that property started being conceived of as individual dominion over discrete objects. This shift associated property with individuals' rights to a greater degree, culminating in a legal concept that artificially demarcated between private and collective interests, independent of environmental values.[25] Thus, the view of the natural environment shifted from external to property rights, to "an object of [economically productive] ownership itself".[26]

Established on the core assumption that each human has ownership over their own body and exists originally in an environment free of ownership, Locke's claim legitimises the need for labour.[27] This is characterised by the altering of an entity from its original undifferentiated form in nature, and in doing so constructs a basis for the acquisition of property. There is no requirement for the consent of others, not least non-human beings.[28]

This relationship with the environment has been linked with our current and previous trajectories of ecological decline; a contested, but nevertheless valuable understanding of the way in which our earth systems have been, and continue to be, shaped.[29] To put it differently, Lockean labour and property-centric human relations with their environments turned the human collective into an 'anthropocenic' planetary force — dualistically external to the natural world.[30] This wholesale change in relationship drastically altered the scale of ecological manipulation and subsequent decline. During the Holocene, environmental problems could typically be characterised as isolated happenings, like the deforestation of a woodland in a particular region. The effects of this were mostly local: erosion, increased flood risk and losses of habitat. Through the lens of the Anthropocene, these local issues became global: disrupted water cycles and

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[24] Sean Coyle and Karen Morrow, *The Philosophical Foundations of Environmental Law: Property, Rights and Nature* (Hart 2004) 213 103.
[25] ibid 104.
[26] Sean Coyle (n24).
[27] John Locke, Peter Laslett (ed), *Two Treatises of Government* (Cambridge University Press 1988) 287, §27.
[28] Scott Veitch et al, *Jurisprudence: Themes and Concepts* (3rd ed, Routledge 2018) 25.
[29] Jasper Mühre l (n18) 3; Clive Hamilton, Jacques Grinevald, 'Was the Anthropocene anticipated?' (2015) 2(1) Anthropocene Rev 59.
[30] Julia Adeney Thomas, Mark Williams, Jan Zalasiewicz, The Anthropocene: a multidisciplinary approach (Polity Press, Cambridge 2020) 133.

higher greenhouse gas emissions from land-use conversion; disrupted silt flows in watercourses. This emphasis on interconnection and scale allows us to view the isolated results of human activity as symptoms of a greater, systemic problem.[31] It is in this vein that law (and Lockean-derived property rights) can be viewed as cultural and political institutions that have part-morphed the relationship between humanity and the natural world.[32] Law itself has not cut down ancient trees or eroded hillsides, but as a social practice, Lockean-derived property rights have shaped human relationships with natural entities to be reductive and exploitative.[33] As Garver suggests:

> "Law (...) encodes many of the most hard-wired aspects of the ecologically destructive behaviors in the world's dominant societies and the global networks of power, governance, trade and information exchange that they have assembled and largely control. Law converts moral leanings and suggestions into enforceable requirements, prohibitions, freedoms and rights, and so laws have particular force ecologically."[34]

Anglo-American legal systems, adding to Garver's characterisation are, in turn, encoded by Lockean notions of property and exploitation:

> "Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joined to it something that is his own, and thereby makes it his property."[35]

This process, according to Locke, is natural. It is the process of "altering a thing from its original indistinct condition in nature", creating the basis for property acquisition under the social contract with the state — which justified this exploitation through its enforced legal systems in the first place.[36] Locke did, though, mitigate this absolute right, claiming that "where there is enough" —

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[31] Jasper Mührel (n18) 2.
[32] Jasper Mührel (n18) 8 and 9.
[33] Jasper Mührel (n18) 8 and 9.
[34] Geoffrey Garver, *Ecological law and the planetary crisis: a legal guide for harmony on Earth* (Routledge 2021) 1.
[35] Scott Veitch (n28) 287, 288, §27.
[36] Scott Veitch (n28) 27.

an abundance of resources to exploit — it should be "left in common for other[s]".[37] This mitigation, in practice, was and is limited. First, those others are presumed to be human. The use or non-use of the natural world is a prescribed human activity. Second, and more importantly, the framework and logic the Lockean property rights paradigm creates makes preservation for the (human) commons difficult by default. By setting out a "contractualist device … to make property more fruitful and labour more productive", Locke formed a set of incentives that pushed human behaviours in one — very exploitative — direction.

The dualist distinction between subject and object, which emerged during the early modern period, was substantially shaped by Lockean thought too. This distinction is fastidiously maintained in Anglo-American juridical systems today, which divide concepts of legal appearance into binary classifications, of persons and things, subjects and objects, or owners and property.[38] These classifications delineate legal relationships and entities into distinct and mutually exclusive categories, thereby facilitating the systematic organisation of legal principles and frameworks. If nature becomes property through its transformation, then in its raw, unfettered state, it is extralegal. Regarding the natural world as extralegal, then, removes us from having to consider the impacts we will experience by its continued destabilisation. Furthermore, our collective decision-making becomes a balancing act of human and non-human interests; whereby environmental considerations are shelved for the enablement of property creation. In essence, Anglo-American legal systems are designed with a legal wall, artificially separating human interests from those of nature.[39] And it is this wall that RoN are trying to get through, over, or past today.

Scope & Structure

This paper, then, examines how Lockean concepts of private property create specific impediments to the integration of RoN within Anglo-American

[37] Scott Veitch (n28); John Locke (n27) 291.
[38] Jasper Mühren (n18) 105.
[39] Jasper Mühren (n18) 82.

juridical systems. It argues that despite increasing global recognition of natural entities as legal subjects, Anglo-American legal frameworks remain structurally predisposed toward part-Lockean-derived anthropocentric property regimes that fundamentally constrain meaningful ecological protection. The central thesis contends that while RoN movements represent potentially transformative approaches to environmental governance, their effectiveness within Anglo-American systems is systematically limited by deeply embedded Lockean principles that position nature primarily as a resource, rather than rights-bearer.

This paper takes a two-pronged approach to examine the juridical paradigms of RoN. Firstly, it interrogates the theoretical foundations of legal pluralism within RoN contexts and case studies, elucidating the complex intersectionality of multiple normative orders when natural entities are granted legal personhood. Secondly, it critically evaluates the ontological evolution of personhood conceptualisations and their jurisprudential implications for non-human natural entities within Anglo-American legal traditions. Through these lenses, this paper identifies socio-legal impediments to RoN integration, with emphasis on constraints emanating from entrenched Lockean property paradigms. Ultimately, this analysis contends that Anglo-American juridical systems are structurally predisposed towards the prioritisation of anthropocentric property regimes and control mechanisms. Whilst incremental juridical innovations — such as the incorporation of legal pluralism and the expansion of personhood conceptualisations — present potentially transformative pathways, it must be acknowledged that such modifications function within epistemic constraints. RoN cannot fundamentally transcend these constraints of hierarchical ordering, sovereign authority and capital accumulation — commitments which systematically marginalise non-anthropocentric and relational understandings of ecological entities. Consequently, RoN movements, though nominally progressive, ultimately operate as palliative rather than transformative interventions within a system whose theoretical underpinnings and institutional logic remain resolutely anthropocentric.

It is, however, necessary to acknowledge the limitations inherent in this paper's scope. While it is readily acknowledged that Locke's philosophical legacy transcends the Anglo-American context,[40] this paper's focus on Anglo-American jurisdictions stems from their recent case studies and the extensive body of related theoretical discourse examining the philosophical and practical implementation of RoN doctrines.

Introduction to Legal Pluralism and RoN

This section examines the complex relationship between legal pluralism and RoN movements within Anglo-American juridical frameworks. It will do so by investigating how RoN initiatives often necessitate meaningful legal pluralism to function effectively, through the examples of the Whanganui River in New Zealand and the landmark *Mabo* decision in Australia. Central to this analysis is the recognition that Anglo-American legal frameworks, grounded in Lockean concepts of property and state sovereignty, systematically resist genuine legal pluralism. Instead, they offer symbolic accommodations that preserve unitary state authority.

It is acknowledged that there are competing visions of legal pluralism, but frequently the concept has emerged through the incorporation of Indigenous ontologies and worldviews that are typically inconsistent with the juridical frameworks of the ruling (often colonising) state.[41] Theoretically, this inherent inconsistency creates a complex legal environment where multiple legal traditions coexist. Contentiously, the recognition of this plurality is not found in many Anglo-American systems, as it is viewed as having the potential to undermine state-centric authority.[42] It is also important to acknowledge that the existence or positing of legal pluralism, particularly in the form of Indigenous legal systems, does not automatically equate to the existence or

[40] John Locke (n27).
[41] This claim will be explored in greater depth in the following section.
[42] Jasper Mührel (n18) 328.

integration of RoN. It is simply that RoN are often expressed through Indigenous knowledge systems.[43]

The Importance and Limitations of Legal Pluralism for RoN

The growing acceptance and discourse around legal pluralism have strengthened RoN movements. This development has empowered Indigenous groups by recognising their "rights to distinct nationalities, self-government, and self-determination".[44] As a result, this recognition has paved the way for extending legal rights to natural entities, often under frameworks of stewardship.[45] A pluralistic legal system has been recognised as part and parcel of major, and supposedly successful, RoN examples, whether it be Ecuador's Constitution, New Zealand's Whanganui or Bolivia's *Ley de Derechos de la Madre Tierra*.[46] The term has been applied to these examples liberally, with the related claim of RoN's supposed success being linked therewith.[47] They have allegedly challenged the political economy of legal knowledge because they are culturally hybrid, as the models used combine the grammar and vocabulary of modern law with the epistemologies of Indigenous Andean and Mãori Peoples.[48] 'They are modern law and they are Indigenous law; they simultaneously "are" and "are not"'.[49]

The empirical reality of legal pluralism, if not truly meaningfully incorporated into RoN paradigms, portends a troubling outcome: processes that merely envelop or vernacularise non-state legal orders and epistemologies regarding human-Earth relationships ultimately risk perpetrating a profound dual colonisation — simultaneously subjugating both Indigenous Peoples and natural entities.[50] It should be recognised that authentic jurisprudential transformation demands not simply

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[43] Erin O'Donnell et al, 'Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature' (2020) Transnational Environmental Law 9(3) 403.
[44] J Michael Angstadt, 'Securing Access to Justice Through Environmental Courts and Tribunals: A Case in Diversity' [2016] 17 Vermont journal of environmental law 345, 349.
[45] Please see earlier discussion on Whanganui.
[46] Daniel Bonilla Maldonado, 'Global Legal Pluralism and the Rights of Nature' Research Paper No. 21/15 Max Planck Institute for Comparative and International Private Law [2023] 7, 8.
[47] ibid 7, 16.
[48] Daniel Bonilla Maldonado (n46) 14.
[49] Daniel Bonilla Maldonado (n46) 35.
[50] Helen Dancer, 'Harmony with Nature: Towards a New Deep Legal Pluralism' (2021) 53 Journal of legal pluralism and unofficial law 21, 32.

accommodation of plural legal traditions, but their substantive recognition as equal participants in ecological governance.[51]

It is also necessary to observe that meaningful legal pluralism is far from the panacea desired when establishing effective RoN. The presumption that legal pluralism inherently promotes environmental protection overlooks the heterogeneity of ecological ethics across different communities and governance systems, failing to account for the diversity of values, priorities and economic pressures that influence environmental decision-making across Indigenous communities.[52] While RoN frameworks often draw from Indigenous worldviews that emphasise human-nature interconnection, the relationship between legal pluralism and environmental outcomes is considerably more complex.[53]

The Lockean Relationship with Legal Pluralism

The Lockean conception of state sovereignty fundamentally relies on maintaining an exclusive monopoly over legitimate legal interpretation and enforcement.[54] This monopolistic claim to juridical authority, rooted in Locke's social contract theory (whereby individuals consent to transfer some of their natural rights to a single sovereign authority), becomes threatened when multiple competing sources of legal knowledge and authority emerge.[55] Indigenous legal traditions present fundamentally different ontological approaches to rights, ownership, and social organisation — destabilising the state's unitary legal standing through fostering concurrent parallel systems that contest the state's claim to unitary legal authority.[56] Under this state-based paradigm, too, Indigenous legal traditions and alternative normative orders are rendered invisible or subordinate to state legal systems, given their (often unmet) need for legitimisation thereby.

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[51] ibid 35.
[52] Adrian Albano, Els van Dongen, and Shinya Takeda, 'Legal Pluralism, Forest Conservation, and Indigenous Capitalists: The Case of the Kalanguya in Tinoc, the Philippines' [2015] 10(1) Nature and Culture 103.
[53] ibid
[54] Scott Veitch (n28) 27.
[55] Scott Veitch (n28) 67.
[56] Saskia Vermeylen, Jérémie Gilbert 'Corporations and the Duty of Care for Nature?' in Holligan et al (eds), *UK Earth Law Judgments: Reimagining Law for People and Planet* (Bloomsbury Academic 2024).

Anglo-American legal monism becomes particularly acute in environmental law, where property-centric governance dominates ecological imperatives and Indigenous legal traditions that conceptualise nature-human relations through inherently different ontological lenses.[57] Equally, legal pluralism fundamentally challenges the Lockean paradigm of private property that historically privileges individual property rights and anthropocentric resource exploitation over ecological preservation.[58]

Anglo-American juridical systems have varying degrees of legal pluralism integrated into their governance: take the United Kingdom in comparison with New Zealand and you will find greater legal expressions of Indigeneity in the latter. The RoN movement often claims that this influences state-based control and its political responsiveness to integrating RoN by enabling more legitimate and accessible routes for the rights of natural entities to be recognised.[59] In other words, the ability of pre-existing Indigenous laws to recognise natural entities as inherently respected beings and more readily legitimise the integration of such recognition into state law is relied upon for the movement.[60]

Case Study:

The Whanganui River, Indigenous Rights and RoN in New Zealand

Across the Te Ika-a-Māui (North Island) of New Zealand flows a 290 km river, the Whanganui. In 2017, the Whanganui was granted personhood, recognising the river's capability to act as a person in a court of law and thereby treating it as a legal entity.[61] The Te Awa Act designates representatives of the river to act on its behalf: a committee composed of Peoples from the Indigenous community that fought for its rights, as well as representatives of the Crown.[62] Indigenous laws — the kawa — are central to the Act, devolving power to local communities and hapū (a political unit within Māori

[57] Cormac Cullinan (n12) 68.
[58] Brent M. Haddad, 'Property rights, ecosystem management, and John Locke's labor theory of ownership' 46 Ecological Economics [2003] 19. Please note this article does not explicitly discuss pluralism.
[59] Jasper Mührel (n18) 366.
[60] Daniel Bonilla Maldonado (n46).
[61] Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.
[62] ibid s 18.

society).[63] Through this combined recognition, a working relationship between the kawa and state law was created. It has been suggested that New Zealand's RoN model represents the most advanced example to date of how conventional legal hierarchies may evolve towards meaningful legal pluralism within established Anglo-American constitutional orders.[64] It is important, though, to keep in mind that this evolution emerged principally through Indigenous rights advocacy rather than from a pluralistic ecocentric jurisprudential position.[65]

Treaty of Waitangi and the Origins of the Te Awa Tupua

As previously discussed, inherent to the anthropocentric foundation of Anglo-American juridical systems is their fundamental disconnection from Earth systems.[66] This severance is particularly pronounced in colonial contexts, where Anglo-American juridical frameworks have systematically displaced Indigenous legal traditions and their inherent environmental relationships.[67] The Treaty of Waitangi (in the Māori language, te Tiriti o Waitangi) in Aotearoa-New Zealand exemplifies this phenomenon — following its implementation in 1840, Māori Peoples were systematically excluded from interpreting its legal significance, despite their recognised cultural and spiritual connections to the natural world.[68]

Prior to the Treaty of Waitangi, the British Crown designated the islands of New Zealand as terra nullius, a position affirmed in subsequent legal proceedings of *R v Symonds* and *Wi Parata v Bishop of Wellington*.[69] During the 1830s, increasing European immigration precipitated escalating tensions between settlers and the Indigenous Māori population, particularly regarding land ownership and labour

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[63] Miriama Cribb, Elizabeth Macpherson, Axel Borchgrevink 'Beyond legal personhood for the Whanganui River: collaboration and pluralism in implementing the Te Awa Tupua Act' [2024] The International Journal of Human Rights 1, 1.
[64] Helen Dancer (n50) 35.
[65] Helen Dancer (n50) 35.
[66] Andreas Philippopoulos-Mihalopoulos, *Spatial Justice. Body, Lawscape, Atmosphere* (Routledge 2015) 52.
[67] Lee Godden, '"Recognising" Culture and Religion in State Transition: Confluence in the Indo-Pacific World' Roshan de Silva-Wijeyeratne (ed) *Sovereignty Contested: The Politics of Religion and State Legal Forms in the Borderlands of the Indo-Pacific* (In Press 2025).
[68] Mariëlle Matthee, *'Law, Poetry, and the Voice of Nature' in Crawley, Giddens and Peters (eds), The Routledge Handbook of Cultural Legal Studies* (Routledge 2024).
[69] Lee Godden (n67) 131.

utilisation.[70] These conflicts resulted in British efforts to establish and legitimise Crown sovereignty over the territory.[71] The Treaty of Waitangi, signed in 1840, constituted a formal agreement between representatives of the British Crown and more than 500 Māori chiefs.[72] The document was initially drafted in English and subsequently translated into Māori by missionaries.[73] Significantly, Māori chieftain signatories were provided assurances that the Treaty would reinforce rather than diminish their traditional authority to govern. By September 1840, the Treaty had garnered over 500 Māori signatures, with the majority of chiefs endorsing the Māori-language version.[74] The British, emphasising the English-language draft, subsequently declared sovereignty over New Zealand — rejected by the Māori and leading to an outbreak of violent conflict until 1847.[75]

Within modern day New Zealand, the authoritative interpretation of the Treaty of Waitangi is vested exclusively in the Waitangi Tribunal, a standing commission of inquiry established by the Treaty of Waitangi Act 1975 to investigate alleged Crown breaches of Treaty obligations.[76] Notably, though, the Treaty of Waitangi itself does not constitute a component of New Zealand's domestic legal system, except in instances where statutory provisions explicitly reference the Treaty.[77] As the Ministry of Justice acknowledges:

> "While the Treaty is widely seen as a constitutional document, its status in New Zealand law is less than settled."[78]

The interpretative dimensions of the Treaty remain subject to substantial academic and political contestation, as does its efficacy for facilitating meaningful legal pluralism.[79]

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[70] Lee Godden (n67) 131.
[71] Lee Godden (n67) 131.
[72] Lee Godden (n67) 132.
[73] Lee Godden (n67) 131.
[74] Lee Godden (n67) 131.
[75] Lee Godden (n67) 132.
[76] Lee Godden (n67) 131.
[77] Lee Godden (n67) 132.
[78] New Zealand Government, 'Te Tiriti o Waitangi - Treaty of Waitangi' (24 January 2025) <https://www.justice.govt.nz/about/learn-about-the-justice-system/how-the-justice-system-works/the-basis-for-all-law/treaty-of-waitangi/#:~:text=Treaty%20rights,than%20settled>accessed 14 March 2025.
[79] Waitangi Tribunal, 'Te Rōpū Whakamana i te Tiriti o Waitangi/Waitangi Tribunal Report 2014' (Waitangi Tribunal 2014) 1

Whilst the initial colonial period of the 1840s may have witnessed certain endeavours to advance genuine legal pluralism through Treaty negotiations, these efforts failed to prevent subsequent violent territorial conflicts.[80] This historical marginalisation of Indigenous legal perspectives has established the context that contemporary legal pluralism now seeks to address, particularly in matters of environmental governance. These tensions reflect the influence of Locke, which justified colonial acquisition through notions of property rights acquired by supposedly improving uncultivated lands. Locke's conceptualisation of state sovereignty, emerging from social contract among property owners, effectively privileged European legal frameworks while delegitimising Indigenous governance systems that emphasised collective stewardship rather than individual ownership.

Relational Legal Pluralism and Constraints Still Faced by the Whanganui Model

The Whanganui presents one of the emergent paradigms of legal pluralism: 'relational legal pluralism'.[81] This operates from the premise that multiple legal orders coexist simultaneously within any given context.[82] They focus on the procedural mechanisms and institutional structures necessary to facilitate and sustain inter-order relationships — relational legal pluralism moves away from static rights-based declarations or entitlement frameworks, instead underlining the dynamic relationships between entities as enacted through procedural frameworks, established protocols and ritual practices.[83]

Relational approaches have afforded jurisprudential scholars a conceptual framework through which to analyse the recognition of kawa within the Whanganui model.[84] The relational focus serves two key analytical purposes. Firstly, it clarifies the

<https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_85648980/Te%20Raki%20W.pdf> accessed 12 March 2025.
[80] Lee Godden (n67) 133.
[81] Miriama Cribb (n63) 1.
[82] Edward Taihākurei Durie, 'Indigenous Law and Responsible Water Governance', in *Responsibility: Law and Governance for Living Well with the Earth* (Abingdon-on-Thames: Routledge, 2018), 135-42.
[83] Miriama Cribb (n63).
[84] Elizabeth Macpherson, 'Can Western Water Law Become More "Relational"? A Survey of Comparative Laws Affecting Water across Australasia and the Americas' (2023) 53 Journal of the Royal Society of New Zealand 395.

interrelationship between Indigenous and state legal systems and authority within this framework, characterised by some scholars as a 'relational sphere of influence' 'nestled between both systems'.[85] Secondly, it facilitates comprehension of the kinship connections between people and the river within Whanganui *Iwi* jurisprudence, wherein the river is conceptualised as a relation. This relational conceptualisation corresponds with documented understandings of Mãori relationships with the natural environment, which are structured around 'place-based'[86] relatedness or kinship connections between Peoples and 'living waters',[87] communicated through genealogical frameworks known as whakapapa.[88]

In spite of this relational understanding, the Whanganui's rights remain constrained by lingering Lockean concepts in its Anglo-American juridical system. The governance framework wherein human representatives (Te Pou Tupua) act as 'the human face' of the river effectively positions humans as stewards, rather than recognising the river's genuine, independent, legal personhood.[89] This subtly reinforces the Lockean notion that natural entities require human management and representation to have value within legal systems — it just so happens that in this case, that management is geared towards care rather than exploitation. Furthermore, this perpetuates the Lockean separation between human and nature by merely modifying who may speak for nature rather than reconceptualising nature's legal standing.

The Te Awa Tupu, then, is a strong model for Indigenous-led community collaboration that claims to put 'the people back in the river'.[90] Considering Lockean restraints on relational pluralism, the Whanganui model may be more appropriately interpreted as

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[85] The Independent Working Group on Constitutional Transformation, 'He Whakaaro Here Whakaumu Mō Aotearoa: The Report of Matike Mai Aotearoa' (Treaty Based Multicultural Future 2016) <https://nwo.org.nz/wp-content/uploads/2018/06/MatikeMaiAotearoa25Jan16.pdf> accessed 17 March 2025, The three spheres were one of six possible models proposed; L. Taylor and D. Hikuroa, 'Kawanatanga 'Future Search' Workshop Summary Report' (Sustainable Seas National Science Challenge 2022) <https://www.sustainableseaschallenge.co.nz/tools-and-resources/k%C4%81wanatanga-future-search-workshop-summary-report/> accessed 17 March 2025; Miriama Cribb (n63) 1, 6.

[86] Miriama Cribb (n63) 5, 6 and 7.

[87] Miriama Cribb (n63) 19.

[88] Liz Charpleix, 'The Whanganui River as Te Awa Tupua: Place-based Law in a Legally Pluralistic Society' (2018) 184 The Geographical Journal 19.

[89] Te Awa Tupua (n61) s.14, ss. 18-20. Declares that the purpose of Te Pou Tupua is to be the human face of Te Awa Tupua, represented by one person nominated by the Crown and the other by Iwi with interests in the Whanganui River.

[90] Miriama Cribb (n63) 1, 15-16.

an exploration of an *Indigenous* legal paradigm, rather than as a meaningful model for *RoN*.[91]

Even then, the framing of Indigenous legal paradigms as challenging unitary Anglo-American legal systems is limited. For legal pluralism to not be illusory, the legitimisation of Indigenous rights under agreements like the Treaty of Waitangi should be considered. Colonial powers' utilisation of agreements with Indigenous peoples has undergone a significant transformation over time.[92] Initially characterised by rhetorical commitments to weak legal pluralism, formal arrangements progressively evolved into instruments for the assertion of imperial sovereignty.[93] The efficacy of informal governance practices in establishing colonial legitimacy directly influenced the varying degrees to which such agreements meaningfully accommodated pluralistic legal frameworks.[94] This correlation illuminates how institutional mechanisms of colonial administration adapted to consolidate imperial authority, whilst maintaining a façade of Indigenous accommodation — this is evident in the integrative dynamics of the Whanganui today. This notion of illusory pluralism, too, is further evidenced by the case *of Mabo*.

Case Study: *Mabo v Queensland*, Illusory Pluralism

Although not categorised as a RoN case, *Mabo v Queensland* (No 2) presents another significant example of Indigenous relations to land and the attempt to achieve a form of legal pluralism within Anglo-American juridical frameworks.[95]

To many, the landmark High Court decision signified the Australian state's departure from Anglo-American property principles, which had previously underpinned colonial land acquisition practices throughout the Commonwealth.[96] This occurred primarily through the rejection of *terra nullius*, thereby affirming Indigenous Australians' distinctive ontological connection to their land whilst acknowledging their pre-

[91] Miriama Cribb (n63) 1, 15-16.
[92] Lee Godden (n67) 123.
[93] Ben Silverstein, 'Submerged Sovereignty Native Title within a History of Incorporation' in Julie Evans et al (eds) *Sovereignty: Frontiers of Possibility* (Honolulu: University of Hawaii Press, 2013) 61.
[94] Lee Godden (n67) 124.
[95] *Mabo v Queensland* (No 2) [1992] HCA 23; (1992) 175 CLR 1.
[96] Peter Fitzpatrick, "No Higher Duty': Mabo and the Failure of Legal Foundation' [2002] Law and Critique Journal Vol 13(3) 233, 234.

existing rights and cultural heritage.[97] The decision's significance extended beyond recognition of native title; it supposedly heralded a fundamental reconfiguration of Australia's legal epistemology, facilitating the legitimisation and institutionalisation of legal pluralism within the nation.[98] The judicial acknowledgement seemingly unlocked juridical space for alternative conceptions of property relations that transcended the Lockean emphasis on improvement. Further scrutiny challenges the validity of these conclusions.

In his seminal article, *'No Higher Duty: Mabo and the Failure of Legal Foundation'*, Peter Fitzpatrick referred to the theoretical construct of 'reified and a reifying law' to describe how common law, applied in the *Mabo* case, systematically transforms the multifaceted, incomplete, and contextually contingent narratives from Indigenous epistemological perspectives into rigid, inflexible legal principles.[99] This process of juridical reification functions as a mechanism through which legal discourse reconstructs social reality according to its predetermined normative boundaries, thereby asserting its epistemological and ontological supremacy over alternative governance systems.[100] The result is that Indigenous laws, although engaged with, were subsumed by Australian law. In other words, the legal system perpetuates structural oppression through processes of strategic integration rather than genuine recognition of legal pluralism.[101]

This approach represents a strategic and selective acknowledgement that operates within pre-established Anglo-American, and in this case colonial, legal paradigms, ultimately prioritising state sovereignty and the socio-economic interests — owned, or rather claimed, land in particular — that Lockean legal structures were historically constructed to safeguard.[102] With Anglo-American systems necessitating self-authorising sovereigns a paradox is created wherein the sovereign simultaneously generates and is generated by the legal framework it inhabits, serving as both the source and product of constitutional order.[103]

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[97] Gerry Simpson, 'Mabo, International Law, Terra Nullius and Stories of Settlement: An Unresolved Jurisprudence' [1993] 19 Melbourne University Law Review 195.
[98] ibid
[99] Peter Fitzpatrick (n96) 233.
[100] Peter Fitzpatrick (n96) 235.
[101] Peter Fitzpatrick (n96) 242.
[102] Peter Fitzpatrick (n96) 238.
[103] Scott Veitch (n28) 122.

As evidenced by the Whanganui, nation-states maintain their sovereign authority by positioning courts as the definitive arbiters of nature's interests, whilst simultaneously avoiding substantive challenges to fundamental property doctrines. This approach is decidedly anthropocentric rather than eco-centric. Natural entities consequently remain in virtually the same positions as in their pre-rights recognition statuses — subordinate to human legal constructs that are inherently ill-equipped to address the temporal and spatial characteristics and needs of ecological entities.[104] Lockean-part-derived concepts of state sovereignty thereby continue to limit the level that RoN can be meaningfully integrated into Anglo-American systems. Hence, the implementation of RoN remains at the discretion of the unitary central state, which by its fundamental constitutional nature contradicts the core principles of RoN.

Like in *Mabo*, these same warped relational interpretations are faced by RoN movements in Anglo-American systems that are reliant upon genuine legal pluralism to meaningfully represent natural entities' rights. The reduction of complex socio-ecological relationships into justiciable rights claims furthers the colonisation of ecocentric legal frameworks because they become selectively incorporated fragments rather than equal participants in pluralistic legal discourse. In many ways, Anglo-American legal systems' treatment of RoN parallels the selective acknowledgement seen in *Mabo*.

The parallel between *Mabo* and RoN examples demonstrates how Anglo-American legal systems systematically subordinate alternative legal ontologies through processes of assimilation rather than authentic legal pluralism, ultimately preserving state authority and property regimes established to protect dominant socio-economic interests. It should also be recognised that for legal pluralism to work effectively in alternative jurisdictions, governments must develop mechanisms to confer legal personhood upon natural entities in ways that decentralise state authority, irrespective of whether Indigenous communities maintain traditional relationships with the territories in question — moving beyond merely symbolic recognition.[105] RoN, then, as the cases of the Whanganui and *Mabo* demonstrate, are unlikely to achieve their intended transformational impacts. Instead, they are likely to become

[104] Nathalie Rühs, Aled Jones, 'The Implementation of Earth Jurisprudence through substantive Constitutional Rights of Nature' [2016] Sustainability 8(2), 174, 175.
[105] Helen Dancer (n50) 35.

assimilated instruments that paradoxically reinforce the Lockean anthropocentric paradigm they seek to challenge.

Reconceptualising Legal Pluralism: A Prerequisite for Rights of Nature

Beyond Accommodation: Davies's Law Unlimited and Rights of Nature

The case studies examined thus far reveal a consistent pattern wherein Anglo-American juridical systems subjugate alternative legal ontologies while preserving fundamental anthropocentric paradigms. This pattern necessitates a critical reassessment of legal pluralism itself before RoN can meaningfully operate within these systems to prevent further ecological decline and promote recovery. Drawing on Margaret Davies's theoretical framework of 'Law Unlimited', this section argues that effective and true RoN require not merely recognition of multiple legal traditions but a fundamental reconceptualisation of legal boundaries themselves. There are also socio-cultural and practical impediments to achieving such a reconceptualisation, but these will not be delved into here.

Davies's concept challenges conventional understandings of legality as centralised, hierarchical, and state-based by recognising law's existence beyond formal institutions — in everyday practices, relationships, and normative understandings.[106] Davies addresses three binary distinctions that structure conventional legal thinking: law/non-law, legal/illegal, and subject/object.[107] This final distinction is particularly relevant for RoN movements, as it underpins the persistent categorisation of natural entities as property rather than as rights-bearing subjects.

The practical implementation of Davies's unlimited legal pluralism would differ significantly from established RoN models. Rather than simply designating human guardians for natural entities, this approach may establish governance frameworks that respond directly to ecological processes and relationships. These frameworks would necessarily challenge Lockean property concepts by recognising normativity as emerging not from human labour or improvement but from inherent interconnections

[106] Margaret Davies *Law Unlimited: Materialism, Pluralism, and Legal Theory* (Routledge 2017).
[107] ibid

within ecological systems.[108] A fully realised unlimited pluralism may look like the recognition of rivers, mountains and ecosystems not as subjects granted rights by human institutions, but as participants in regulated relationships that precede and extend beyond state authority.[109]

Davies's framework suggests a flattening of legal hierarchies and dissolution of rigid legal boundaries.[110] This reconfiguration addresses a fundamental limitation in current approaches: their continued positioning of nature within existing legal categories. The subject/object distinction that positions natural entities as property cannot be overcome simply by granting them rights; it requires acknowledging the inherent normativity in human-nature relationships that exists prior to and independent of state recognition. The Whanganui case demonstrates this limitation clearly. While the river gains legal personhood, this status remains dependent on human representatives operating within conventional legal institutions. The river's agency remains mediated through anthropocentric frameworks rather than recognised as an inherent characteristic of the ecological entity itself. This arrangement preserves rather than challenges the fundamental Lockean separation between human and natural domains. This reconceptualisation of legal pluralism offers important strategic implications for RoN movements within Anglo-American systems. First, it suggests that advocates should focus not merely on securing legal recognition within existing frameworks but on challenging the foundational categories and boundaries of law itself. Second, it indicates that effective implementation requires institutional diversity-creating governance structures that respond directly to ecological processes rather than merely representing them through human intermediaries.

Davies also argues that law is "emergent from relationships, including the relationships between humans and things, between minds and bodies, rather than imposed."[111] This implies that law does not evolve exclusively from institutions and texts. This recognition undermines the subject/object distinction by acknowledging that normativity emerges from the dynamic relationships between humans and the natural world.

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[108] Margaret Davies (n106) Ch 4.
[109] Margaret Davies (n106) 61.
[110] Margaret Davies (n106) 32.
[111] Margaret Davies (n106) 88.

Finally, Davies's framework suggests that meaningful RoN integration requires addressing the temporal mismatch between legal and ecological timeframes.[112] Ecological processes operate on temporal scales ranging from microseconds to millennia, whilst political and legal systems typically function within electoral or budgetary cycles measured in months, years or decades at the most.[113] Intrinsically, too, Anglo-American traditions prioritise certainty and foster absoluteness, whereas many Indigenous traditions and natural entities are characterised by complex, non-linear, and emergent properties. The mismatch between institutional and ecological reality reaffirms that rights-based approaches are largely symbolic rather than transformative, perpetuating the anthropocentric paradigm under the veneer of ecological consideration.

The path toward this unlimited legal pluralism requires moving beyond simple accommodation of alternative traditions towards a fundamental reimagining of law's boundaries, sources and purposes. Without this reconceptualisation, RoN initiatives are yet another example of alternative legal ontologies being selectively incorporated while preserving the anthropocentric foundations of Anglo-American jurisprudence.

Legal Personhood and RoN

This chapter examines the theoretical underpinnings and practical implementation challenges of natural entities' personhood within Anglo-American legal systems. As RoN movements gain momentum globally, the extension of legal personhood to rivers, forests, and ecosystems has emerged as a primary strategic mechanism for their protection.[114] This approach, however, reveals a fundamental paradox: attempts to secure rights for natural entities remain tethered to deeply anthropocentric legal constructs that were never designed to accommodate non-human interests in the first place.[115]

[112] Margaret Davies (n106) 58.
[113] Bonnie Holligan (n7).
[114] Francine Rochford, *Environmental Personhood: New Trajectories in Law* (Routledge 2024) 1.
[115] ibid

The granting of personhood to natural entities — whether New Zealand's Whanganui River, India's Ganges and Yamuna rivers[116] or various other environmental features — represents both a revolutionary legal innovation and a problematic conceptual compromise. While celebrated as evidence of an emerging ecocentric jurisprudence, these developments often reproduce the very anthropocentric hierarchies they purport to challenge. By applying a concept historically defined through human exceptionalism to natural entities, we risk creating hollow protections that cannot overcome the structural biases embedded within Anglo-American legal traditions.

This chapter critically evaluates the ontological evolution of personhood conceptualisations and their jurisprudential implications for natural entities. It first traces the historical development of legal personhood from its Roman origins through Lockean property theory to contemporary applications, revealing how the concept fundamentally separates persons from things in ways that systematically disadvantage natural entities. The analysis then examines how this subject/object dichotomy creates structural impediments that cannot be overcome through mere extension of personhood status in Lockean-derived property paradigms. Finally, it addresses the practical challenges of implementing rights for natural entities within Lockean-influenced systems designed to prioritise human and corporate interests, particularly regarding representation, competing claims and jurisdictional limitations.

Rather than rejecting RoN approaches entirely, this chapter suggests that meaningful ecological governance requires moving beyond personhood paradigms toward frameworks that recognise the fundamental incompatibility between traditional Anglo-American jurisprudence and the relational, non-hierarchical ontologies necessary for genuine environmental protection. The personhood paradox reveals not simply a technical legal challenge, but a deeper philosophical impasse that requires reimagining the conceptual foundations of our legal relationship with the natural world.

Historical Development

[116] The Ganges and Yumana have had their personhood overturned; 'India's Ganges and Yamuna rivers are 'not living entities' (BBC 7 July 2017) <https://www.bbc.co.uk/news/world-asia-india-40537701> accessed 1 February 2025.

Anglo-American legal systems function through rights-based frameworks that only recognise claims from legally defined 'rights holders'.[117] This explains why establishing legal personhood for natural entities is crucial for RoN movements, as without personhood status, nature cannot possess enforceable rights within these systems. Mainstream Anglo-American legal frameworks constructed upon Lockean principles prioritise human interests and property rights and, in turn, create inherent structural impediments to meaningful recognition of natural entities as rights-bearing subjects. Achieving full personhood for natural entities is not typically the result of legislative, constitutional or judicial reform. Instead, recognition models tend to be adaptations of existing protections.[118]

In alignment with this, a Lockean 'person' is defined as "a thinking intelligent being, that has reason and reflection, and can consider itself as itself, the same thinking thing in different times and places" — a status, then, reserved for human individuals.[119] For Locke, it is memory which functions as the mechanism that maintains and demonstrates an individual's continuous self-awareness over time.[120] Like Locke, George Hegel's, Immanuel Kant's, and William Blackstone's commentaries also fostered the division between the status of persons and things. In his 1765 Commentaries, Blackstone argued that the "primary and principal objects of the law are rights and wrongs" continuing to claim that the distinction between the rights of a person and the rights of things lies in the rights that a person may acquire over objects.[121] Legal personhood is, by design, an exclusionary reductive approach to placing subjects within a legal sphere.[122] The Anglo-American world has a long fraught relationship with withholding legal personhood from humans, discriminating by gender, sexuality, race, disability, and religion.[123] In many Anglo-American juridical systems, the root concept of 'person' is often traced back to the Roman

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[117] Noah M Sachs, 'A Wrong Turn with the Rights of Nature Movement' (2023) 36 Georgetown International Environmental Law Review 39, 81.
[118] Francine Rochford (n114) 1.
[119] John Locke, *An Essay Concerning Human Understanding Volume II: Ideas* (1690) ch. XXVII, § 9.
[120] Anna Lännström, 'Locke's Account of Personal Identity: Memory as Fallible Evidence' (2007) 24(1) 39.
[121] Blackstone, *Commentaries on the Law of England* [1765] 118.
[122] Margaret Radin, 'Property and Personhood', Stanford Law Review (1982) 34(5) Stanford Law Review 957, 972.
[123] Jasper Mührel (n18) 190.

jurist Gaius.[124] Gaius established a tripartite classification system in his Institutes: Corpus Juris Civilis (composed of the Codex, Digests and Institutes). This was interpreted to segregate private law into three categories: *in personae, res and actiones* (persons, things and legal actions). England and its colonies imposed this framework through Blackstone's Commentaries (1765) and Edward Coke's Institutes (1628-1644).[125]

Contemporary legal frameworks remain permeated by such understandings, influencing both modern legal taxonomies and substantive content across Anglo-American jurisdictions. This is particularly obvious when we examine how rights-based terminology defines who qualifies as having "personhood". By framing personhood through the lens of rights possession rather than as an inherent status, modern legal discussions have transformed how we conceptualise the very subjects and objects of law.[126]

Structural Impediments

Subject/Object

The subject/object dichotomy, as argued by Davies, is a foundational impediment to granting meaningful legal personhood to natural entities. This dichotomy stems from Locke's conceptualisation of natural entities as exclusively objects of property rights rather than potential juridical subjects. As put by Maldonado, "[n]ature, which for modern law is only a thing over which human beings can have property rights … could never be considered a juridical subject and could never have subjective rights."[127] RoN personhood threatens the key premise of the autonomous and rational subject upon which Anglo-American law is based.[128] They challenge not only procedural aspects of environmental law but the fundamental ontological categories that structure Anglo-American legal thought.[129] This core assumption is reified through

[124] Francine Rochford (n114) 22.
[125] Francine Rochford (n114) 23.
[126] Francine Rochford (n114) 23.
[127] Daniel Bonilla Maldonado, 'The Rights of Nature: Their Conceptual Architecture' [2025] Law and literature 1, 10.
[128] ibid
[129] Francine Rochford (n124).

constitutional governance structures that systematically privilege established property rights over ecological considerations, thus creating not merely an incidental bias, but a structural impediment to meaningful recognition of natural entities as legal persons and/or rights-bearing subjects.

In reviewing environmental protections, courts have been known to weigh property rights against environmental concerns, demonstrating how the subject/object distinction creates an inherently unbalanced contest.[130] This was most evident in *Sierra Club v. Morton* in the United States, where the Supreme Court rejected standing for natural objects, reinforcing their status as property rather than rights-bearing subjects. Justice Douglas's dissenting judgement in that verdict argued, though, that environmental entities should have standing in accordance with particular procedural rights.[131] In this he is aligned with literature today, which argues that while personhood is unlikely to overcome Lockean barriers, the implementation of procedural rights can overcome some of the voicelessness existing legal systems confer upon natural entities.[132]

Lockean Blockages

In Anglo-American systems of law, Locke's influence on the concept of the person has been foundational to rights theory.[133] As established, his connection between personhood and natural rights — rights that individuals possess independently of socio-legal recognition — shaped modern conceptions of human rights. This presents an obvious barrier to the meaningful integration of the RoN movement socially. Often the discussion on personhood refers to the premise that "to achieve proper self-development — to be a person — an individual needs some control over resources in the external environment."[134] This social notion creates challenges because Anglo-American property systems are built on the relationship between human personhood and external objects,

[130] *Sierra Club v Morton* (n19) [741]-[745].
[131] *Sierra Club v Morton* (n19) [741]-[745].
[132] Andrea Schappera, Clemens Hoffmann, Phyllis Leeb, 'Procedural rights for nature - a pathway to sustainable decarbonisation?' (2022) 43(5) TWQ 1197.
[133] Miguel Vatter, Marc de Leeuw, 'Human Rights, Legal Personhood and the Impersonality of Embodied Life' (2019) 19(1) 106, 106-107.
[134] Margaret Radin (n122) 957.

with people becoming "bound up" with their property as "part of the way we constitute ourselves as continuing personal entities in the world."[135] So, intuitively, to acquire property rights, there must be a distinction between the property and the thing.[136]

Locke's conception of personhood requires continuous self-consciousness through memory as the fundamental criterion for legal recognition.[137] This understanding establishes a binary taxonomy: beings possessing psychological continuity (memory) qualify for personhood, while others are relegated to object status.[138] Anglo-American jurisprudence further entrenches this exclusionary paradigm by privileging human-centred normative frameworks while marginalising Indigenous epistemologies that frequently conceptualise human-nature relationships through relational rather than hierarchical ontologies. The social incompatibility between Lockean personhood criteria emphasising individualistic psychological continuity, and relational Indigenous ontologies that recognise agency in natural entities without requiring human-like cognitive capacities, represents an ontological dissonance that necessitates a restructuring of the metaphysical assumptions underlying Anglo-American personhood if meaningful RoN implementation is to be achieved.

Rights Clashes

When traditional legal rights conflicts arise (individuals' rights vs. property rights vs. state interests), legal systems have well-established mechanisms for resolution through common law precedents and statutory provisions. However, when rights claims stem from newly recognised natural entities as legal persons, they create more fundamental challenges. Such rights directly conflict with property rights that form the backbone of Anglo-American legal systems, expressed in those very precedents and statutory provisions. In other words, when rights claims originate from the concept of personhood itself, greater potential exists for infringement upon what contemporary legal frameworks

[135] Margaret Radin (n122) 959.
[136] Margaret Radin (n122) 959.
[137] John Locke (n119) Ch XXVII, § 9.
[138] Anna Lännström (n120) 39.

would classify as fundamental rights.[139] This consideration addresses the 'value proposition' requiring evaluation in the theoretical construct of non-human personhood.[140] As discussed previously, Lockean Anglo-American juridical systems (mirroring political frameworks) characteristically prioritise human existence above other natural entities. Major ethical divides exist already between what can be considered human and what cannot — one only has to refer to debates on abortion rights in the United States to see this. Ultimately, recognition of personhood in law bestows a set of rights that generally reflect contemporary ethics.[141] This consequently necessitates a significant degree of societal acceptance regarding such transformation, wherein public endorsement would need to be sufficiently robust to facilitate meaningful political reform — a process presenting considerable challenges.

Implementational Challenges

Corporate Personhood

Corporate personhood itself has been argued as having set a precedent for the widening of personhood to non-human entities. It has, however, paradoxically cemented the Lockean subject/object dichotomy by creating a new class of artificial persons whose primary purpose is the acquisition, transformation and exploitation of natural resources as property. This evolution of personhood has occurred alongside increasing environmental regulation, creating a fundamental tension between these competing legal frameworks that consistently favours property rights over ecological considerations.

Unlike traditional persons whose interests might occasionally align with environmental protection, corporate entities are structurally designed to treat nature exclusively as a resource to be transformed into property.[142] This systematically amplifies the subject/object dichotomy rather than ameliorating it. Financial fiduciary duties are also relevant as they compel corporate directors

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[139] Francine Rochford (n114) 12.
[140] Francine Rochford (n114) 12.
[141] Francine Rochford (n114) 13.
[142] Clive L Spash, 'Corporations Capitalism and Sustainable Development' (2022) 269 Biological Conservation <https://doi.org/10.1016/j.biocon.2022.109528> accessed July 2026.

to prioritise shareholder value over environmental wellbeing, effectively institutionalising the Lockean notion that nature's value emerges primarily through human transformation. This entrenchment manifested itself in *Citizens United v. Federal Election Commission* in the United States.[143] The Supreme Court ruled in 2010 to dramatically expand corporate political influence, granting them enhanced capacity to shape environmental regulations in ways that preserve their access to natural resources as property — a precedent continuing to trickle down today.[144]

Assumptions of Efficacy and Representation

Consider the example of a water utility company abstracting water from a river to supply a nearby city. With drought frequency increasing across Anglo-American regions due to climate change, such utilities may require increased abstraction volumes — potentially compromising the river's ecological integrity. If the company maintains ownership over the abstraction section, they will likely possess certain legal entitlements regarding water use. Where the river possesses inherent rights, a more complex power equilibrium emerges. Whose rights would receive precedence in adjudication — human communities' or natural entities'? If human rights ultimately predominate, then RoN frameworks arguably fail to deliver enhanced environmental protections beyond those potentially afforded by conventional environmental legislation. This highlights a significant challenge in the practical application of competing property rights regimes and the determination of priority stakeholders.

Many of these questions are deeply political and not restrained to whether the law could accommodate them. With a growing number of climate-related disasters, there is a likelihood that human societies will ensure priority is given to their well-being above all else. The antiquity of legal constructs, though, does not inherently diminish their applicability; it does however necessitate recognition that they emerged from specific cultural (including theological) and economic contexts often incongruous with modern environmental challenges.

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[143] *Citizens United v Federal Election Commission* [2010] 558 U.S. 310.
[144] ibid

Certain institutional limitations may have become obsolete, and jurisprudential evolution may have rendered particular legal elements superfluous.[145]

Transboundary Disputes

An additional jurisdictional impediment emerges from the fundamental transboundary nature of many natural entities. Earth functions as an integrated self-regulating system wherein ecological processes transcend anthropogenic demarcations of territorial sovereignty.

Geographical jurisdictions inherently constrain the adjudicative capacity of legal institutions, as courts can exercise remedial authority only within their competence.[146] This jurisdictional fragmentation presents substantial conceptual and procedural challenges for the implementation of universal or human rights paradigms that purport to transcend national boundaries, creating a fundamental incongruence between the spatial continuity of natural entities and the territorial discontinuity of legal systems.[147] RoN necessitate reconciling spatial organisation — how does one coherently define the legal personhood of a river system traversing multiple sovereign territories, each with distinct ontological understandings of rights, personhood and natural entities? Transboundary rivers are fragmented by competing legal systems, each imposing different levels of recognition and protection. This renders the conceptual basis of rights attribution inherently unstable. The supposedly universal rights-bearing natural entity becomes reduced to a collection of jurisdiction-specific legal constructs that often poorly reflect both each other and the ecological reality they purport to represent.

Purpose of Personhood

Today, the granting of personhood in existing RoN cases is the granting of a procedural right. Similar to the Whanganui, a case involving the Ganga and

[145] Francine Rochford (n114) 23.
[146] Noah M Sachs (n117) 66.
[147] Noah M Sachs (n117) 66.

Yamuna Rivers' statuses of personhood in India discussed the purpose and evolution of the concept of legal personhood in detail. The High Court of Uttarakhand scrutinised the historical development of personhood as a juridical construct necessitated by societal complexity. It observed that as societies advanced, obvious limitations of viewing only individuals as rights-bearing entities became apparent, prompting legal systems to develop the concept of "juristic persons". The Court acknowledged that the concept of legal personhood was devised to support societal development, stating that "[w]ith the development of the society where the interaction of individuals fell short to upsurge the social development, the concept of juristic person was devised and created by human laws for the purposes of society."[148] This innovation emerged when purely interpersonal transactions proved insufficient to facilitate broader social and economic development, resulting in the extension of legal personhood to non-human entities through deliberate legal frameworks designed to advance collective societal interests.

In this vein, it can be argued that given the ecological crises we face, personhood for natural entities may be necessary to better 'support societal development'. Given the previously discussed barriers in the implementation thereof, though, this is unlikely to escape theoretical bounds.

This chapter has explored the fundamental paradox within RoN movements: attempting to protect natural entities through personhood status within legal systems inherently structured around anthropocentric values. While representing innovative legal developments, these initiatives remain constrained by the very Lockean frameworks they seek to transcend.

The subject/object dichotomy in Anglo-American jurisprudence creates structural impediments that mere extension of personhood cannot overcome. Natural entities, historically positioned as objects rather than juridical subjects, face systematic disadvantages within systems designed to prioritise human interests. This dissonance is compounded by challenges of representation,

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[148] *Narayan Dutt Bhatt v Union of India and Others* [2018] Uttarakhand High Court [13]; Anima Mundi Law Initiative, 'Rights of Nature in Practice' (AMLI March 2021) <https://static1.squarespace.com/static/5d659024afafe900010c22d7/t/607d9323225ee965a3e00acf/1618842439987/Anima+M_undi+Law+Initiative+-+Guide+to+Rights+of+Nature+in+Practice> accessed 16 March 2025 1, 9.

competing claims, and jurisdictional boundaries. Corporate personhood, too, has paradoxically reinforced Lockean resource exploitation by creating artificial persons whose purpose is resource transformation. Meanwhile, ecological systems' transboundary nature fundamentally conflicts with territorially constrained legal institutions.

Instead of placing excessive focus on legal personhood as an end in itself, the RoN movement would likely experience greater success when viewing it as a means. Given the difficulty of its implementation for natural entities, resources would be better invested in broad-based efforts, like on existing environmental regulation and enforcement thereof. Personhood as part of a panoply of tools makes more sense — the concept is far from a panacea, and its paradox not merely a legal challenge, but a philosophical impasse requiring fundamental reconsideration of how law conceptualises the natural world.

Conclusion

This paper has examined the foundational tensions between Lockean property rights and the emerging RoN movement within Anglo-American juridical systems. The analysis has revealed that despite the growing global recognition of natural entities as legal subjects, these frameworks remain structurally predisposed towards anthropocentric property regimes that fundamentally constrain meaningful ecological protection.

The Lockean conception of property rights, which has profoundly shaped Anglo-American legal traditions, establishes a rigid dichotomy between human subjects and natural objects. By positioning untransformed nature as extralegal — outside legal consideration — and valorising human labour as the mechanism through which natural entities acquire value, this framework creates an artificial separation between human interests and those of nature. This separation constitutes precisely the barrier that the RoN movement attempts to overcome, yet paradoxically, this movement must operate within the very structures it seeks to transform.

The examination of legal pluralism in Chapter Two demonstrated how Anglo-American juridical systems systematically subjugate alternative legal ontologies

whilst preserving fundamental anthropocentric paradigms. The case of New Zealand's Whanganui River illustrates both the promise and limitations of 'relational legal pluralism'. While the Te Awa Tupua Act 2017 incorporated Indigenous Māori jurisprudence and established governance structures that recognise the river as a legal person, these innovations remain constrained by entrenched Lockean conceptions. The governance framework wherein human representatives act as 'the human face' of the river subtly reinforces the notion that natural entities require human management to have value within legal systems.

Similarly, the *Mabo v Queensland* judgment demonstrates how Indigenous relations to land are selectively acknowledged but ultimately subsumed within pre-established colonial legal paradigms that prioritise state sovereignty. As Peter Fitzpatrick observed, this process of juridical reification reconstructs social reality according to predetermined normative boundaries, asserting epistemological supremacy over alternative governance systems.

Chapter Three revealed the paradox inherent in extending legal personhood to natural entities within systems historically defined through human exceptionalism. The conceptual incompatibility between Lockean personhood — requiring continuous self-consciousness — and the recognition of agency in natural entities creates ontological dissonance that contemporary legal frameworks struggle to reconcile. Corporate personhood has paradoxically cemented this subject/object dichotomy by creating artificial persons whose primary purpose is the acquisition and exploitation of natural resources as property.

Implementation challenges further constrain RoN initiatives. Questions of representation, transboundary jurisdiction, and rights clashes with established property interests create significant operational barriers. Furthermore, ecological processes which transcend arbitrary territorial demarcations create fundamental incongruence between the spatial continuity of natural entities and the territorial discontinuity of legal systems.

The paper finds that without addressing the Lockean foundations of Anglo-American legal systems, RoN initiatives risk becoming assimilated instruments

that reinforce the anthropocentric paradigm they seek to challenge. The path towards meaningful implementation requires moving beyond simple accommodation of alternative traditions toward a fundamental reimagining of law's boundaries, sources and purposes.

Finally, this paper has contended that Anglo-American juridical systems structurally prioritise anthropocentric property regimes in ways that cannot be transcended through mere procedural adjustments. While innovations like legal pluralism and expanded personhood concepts offer potentially transformative pathways, they operate within epistemic constraints that systematically marginalise non-anthropocentric understandings of ecological entities.

Consequently, these movements function more as palliative than transformative interventions within inherently anthropocentric frameworks. Unless these foundational limitations are addressed, Anglo-American legal responses to ecological crises will remain constrained by the very conceptual frameworks that have facilitated environmental degradation throughout human history.