

RIGHTS, ECOLOGY, AND EMERGENT LEGAL SUBJECTS: TOWARD A THEORETICAL ACCOUNT OF LEGAL PERSONHOOD BEYOND THE HUMAN



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ABSTRACT

This paper develops a comprehensive theoretical framework for understanding legal personhood beyond anthropocentric boundaries, examining the philosophical, legal, and ecological foundations that support extending rights to non-human entities. Through doctrinal analysis and interdisciplinary theoretical synthesis, this research demonstrates that legal personhood is a malleable social construct rather than an inherent human attribute, opening pathways for rivers, forests, animals, and ecosystems to become legal subjects. The study analyzes contemporary cases of ecological personhood, critiques anthropocentric legal paradigms, and proposes a relational ontology of law that recognizes the intrinsic value and agency of non-human entities. Findings suggest that recognizing non-human legal personhood not only addresses environmental crises but fundamentally transforms our understanding of rights, responsibilities, and legal subjectivity in the Anthropocene.

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1. INTRODUCTION

The question of who or what can be a legal person represents one of the most foundational inquiries in jurisprudence. Historically, legal personhood has been contingent, contested, and subject to dramatic expansion. Corporations have been recognized as legal persons since the nineteenth century (Dewey, 1926), yet sentient beings such as great apes, elephants, and rivers continue to be classified predominantly as property or objects under most legal systems. This paradox reveals that legal personhood is not a natural category but a social and legal construction—a status that can be granted, withheld, or expanded based on evolving ethical, ecological, and philosophical considerations (Naffine, 2009). The Anthropocene epoch, characterized by unprecedented human impact on Earth's systems, has precipitated an ecological crisis that challenges fundamental assumptions of Western legal theory (Crutzen, 2002). Climate change, biodiversity collapse, and ecosystem degradation have exposed the inadequacies of anthropocentric legal frameworks that treat nature as mere resource or property (Burdon, 2011). In response, a paradigm shift toward recognizing nature as bearing intrinsic value and legal standing has emerged globally, manifested in constitutional provisions, judicial decisions, and legislative reforms that grant legal personhood to rivers, forests, and ecosystems (O'Donnell & Talbot-Jones, 2018). The Whanganui River in New Zealand (Te Awa Tupua Act 2017), the Ganges and Yamuna Rivers in India (Mohd. Salim v. State of Uttarakhand, 2017), and the Colombian Amazon rainforest (Corte Suprema de Justicia, Sentencia STC4360-2018) represent landmark developments in this "rights of nature" movement (Boyd, 2017). These cases signal not merely incremental reform but a fundamental reconceptualization of the relationship between law, humanity, and the more-than-human world (Kauffman & Martin, 2017).

Despite these developments, theoretical accounts of legal personhood remain predominantly anthropocentric, grounded in liberal individualism and capacities-based criteria that privilege rationality, autonomy, and consciousness (Kurki, 2019). This creates conceptual tensions when extending personhood to entities that do not conform to human-like characteristics. Critical questions persist: What justifies attributing legal personhood to non-human entities? How can non-humans exercise rights or bear responsibilities? What ontological and epistemological frameworks support recognizing nature as legal subject rather than object? Can legal systems premised on human exceptionalism accommodate non-human

persons without conceptual incoherence? Furthermore, existing scholarship tends to examine specific cases or regional developments in isolation, lacking comprehensive theoretical synthesis that bridges environmental law, legal philosophy, Indigenous legal traditions, and ecological science (Kotzé & Villarreal, 2021). There is an urgent need for a unified theoretical account that explicates the foundations, implications, and transformative potential of legal personhood beyond the human.

2. METHODS

This study employs a qualitative, interdisciplinary theoretical approach combining doctrinal legal analysis with philosophical inquiry and comparative case study methodology. The research is situated within critical legal theory and ecological jurisprudence, drawing on interpretive and constructivist epistemological frameworks that acknowledge law as social construct rather than natural phenomenon (Philippopoulos-Mihalopoulos, 2011).

Doctrinal analysis involves systematic examination of legal texts, including constitutional provisions, statutes, judicial decisions, and legal scholarship concerning legal personhood and rights of nature. Primary legal sources were analyzed from multiple jurisdictions including New Zealand, India, Colombia, Ecuador, Bolivia, and the United States. This analysis identified patterns, tensions, and theoretical foundations underlying legal recognition of non-human persons. Key cases examined include: *Sierra Club v. Morton* (1972) - examining Justice Douglas's dissent on natural objects having standing *Te Awa Tupua* (Whanganui River Claims Settlement) Act 2017 - New Zealand's recognition of river personhood *Mohd. Salim v. State of Uttarakhand* (2017) - Indian High Court's declaration of Ganges and Yamuna as living entities *Corte Suprema de Justicia, Sentencia STC4360-2018* - Colombian Supreme Court recognizing Amazon as subject of rights *Constitución de la República del Ecuador* (2008) - constitutional rights of nature provisions.

The study undertakes philosophical analysis of competing theories of legal personhood, examining capacity-based theories, interest theories, will theories, and relational approaches. Particular attention is given to: Critique of anthropocentrism: Analyzing how human-centered frameworks limit legal subjectivity Relational ontology: Exploring Indigenous and feminist philosophical traditions that conceptualize personhood as relational rather than individualistic Ecological philosophy: Integrating deep ecology, ecofeminism, and Earth jurisprudence into legal theory Indigenous legal traditions: Examining Māori, Indigenous American, and other non-Western legal philosophies that recognize nature as kin and legal subject. As primarily

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theoretical and doctrinal research, this study does not include empirical data collection through interviews or surveys. Analysis of Indigenous legal traditions relies on published sources rather than direct engagement with Indigenous communities. The scope is necessarily selective given the breadth of relevant legal systems and philosophical traditions worldwide.

3. DISCUSSION

Legal personhood is not synonymous with biological humanity or consciousness. As Naffine (2009) demonstrates, law has always recognized non-human persons (corporations, ships, religious idols) while denying personhood to certain humans (slaves, women, Indigenous peoples historically). This reveals that legal personhood is a contingent status conferred by law for functional purposes—to enable entities to hold rights, bear duties, and participate in legal relations (Kurki, 2019). The liberal legal tradition typically grounds personhood in capacities such as rationality, autonomy, and moral agency (Kant, 1785/1998). However, this capacities-based approach is problematic for several reasons. First, it excludes many humans who lack these capacities (infants, people with severe cognitive disabilities) yet whom we recognize as persons (Kittay, 1999). Second, it arbitrarily privileges certain cognitive functions over others, reflecting anthropocentric bias rather than principled distinction. Third, it treats personhood as property of isolated individuals rather than emerging from relationships and interdependencies (Gear, 2015).

The denial of legal personhood to nature rests upon the ontological separation between nature and culture, human and non-human, subject and object (Descola, 2013). This dualism, rooted in Cartesian philosophy and Enlightenment thought, constructs nature as passive, mechanical, and lacking agency or value except insofar as it serves human purposes (Merchant, 1980). Critical legal geography and new materialist theory challenge this binary, demonstrating that humans and nature are mutually constitutive and inseparable (Whatmore, 2002). Rivers shape human settlements; forests regulate climate affecting all species; ecosystems provide the foundation for all life. To treat these as mere objects is to deny their fundamental role as active participants in social-ecological systems (Latour, 2017). Indigenous legal traditions, including Māori, Indigenous American, and many others, have long rejected the nature/culture divide, conceptualizing humans as kin to and part of nature rather than separate from or superior to it (Whyte, 2018). The concept of whakapapa (genealogy connecting all beings) in Māori philosophy exemplifies this relational worldview (Salmond, 2014). Recognizing rivers or forests as legal persons aligns with these ontological

frameworks that understand personhood as distributed across ecological relationships.

Relational theories of personhood, developed in feminist philosophy, Indigenous thought, and ecological philosophy, offer alternatives to liberal individualism (Gilligan, 1982; Held, 2006). From this perspective, personhood is not inherent property but emerges from relationships, interdependencies, and recognition by others (Gear, 2015). This framework supports extending personhood to non-human entities by: Recognizing interdependence: Humans depend on rivers, forests, and ecosystems for survival, placing these entities in relationships that generate mutual obligations Acknowledging agency: Ecological entities exhibit agency—rivers flood, forests regulate climate, animals make choices—that affects human and non-human others Valuing intrinsic worth: Entities can have value not merely instrumentally but for their own sake, warranting moral and legal consideration (Taylor, 1986).

Traditional interest theory, articulated by Joseph Raz (1986), holds that X has rights if X has interests that are sufficiently important to justify imposing duties on others. While critics argue non-humans lack interests because they lack consciousness or preferences, this objection is contestable (Cochrane, 2013). Rivers have interests in maintaining flow and water quality; forests have interests in biodiversity and regeneration; ecosystems have interests in stability and resilience. These are not metaphorical but functional and ecological interests essential to the entity's existence and flourishing (Stone, 1972). Moreover, even if we doubt non-humans have subjective interests, they clearly have objective welfare that law can recognize and protect through rights attribution.

A pragmatic objection to non-human personhood is that such entities cannot exercise rights or fulfill legal responsibilities. This is addressed through guardianship and representation mechanisms, already familiar in law through trusts, estates, and representation of humans unable to represent themselves (Solum, 1992). New Zealand's Te Awa Tupua model exemplifies this: the Whanganui River is a legal person represented by two guardians (one appointed by Crown, one by Whanganui iwi) who act on behalf of the river's interests (Te Awa Tupua Act 2017). This structure recognizes that legal personhood does not require autonomous action but can be exercised through representatives, just as corporations act through boards and officers.

In *Mohd. Salim v. State of Uttarakhand* (2017), the Uttarakhand High Court declared the Ganges and Yamuna Rivers living entities with legal personhood, comparable to juristic persons. The court appointed officials as guardians (*loco parentis*) to protect the rivers. Key Features: Grounded in religious and cultural significance of rivers in Hinduism Recognition of rivers

as having rights, duties, and liabilities Appointment of government officials as guardians Analysis: This decision was subsequently stayed by the Supreme Court, revealing tensions between federal and state authority, practical implementation concerns, and questions about whether cultural/religious significance alone justifies personhood (Doherty & Kauffman, 2022). The case illustrates both the potential and limitations of judicial innovation in this domain.

The Colombian Supreme Court in Corte Suprema de Justicia, Sentencia STC4360-2018 recognized the Colombian Amazon as "entity subject of rights" entitled to protection, conservation, maintenance, and restoration. Key Features: Recognition grounded in intergenerational rights and fundamental rights to water, healthy environment, and food Amazon's personhood derived from its importance to climate regulation and biodiversity Ordered government to develop intergenerational pact for Amazon protection Analysis: This decision exemplifies ecosystem-level personhood and explicitly links ecological rights to human rights and intergenerational justice. It demonstrates how personhood can be pragmatic legal tool for environmental protection even within anthropocentric frameworks (Rodríguez-Garavito, 2020). 3.3.4 Ecuador: Constitutional Rights of Nature Ecuador's 2008 Constitution (Articles 71-74) grants nature (Pachamama) constitutional rights to exist, persist, maintain, and regenerate its vital cycles. Key Features: Constitutional-level recognition applicable to all of nature Any person can petition for enforcement of nature's rights Grounded in Indigenous concept of Buen Vivir (good living in harmony with nature) Analysis: This represents the most comprehensive legal framework for nature's rights, though enforcement has been inconsistent (Kotzé & Villarreal, 2021). Cases like Wheeler v. Director de la Procuraduría General Del Estado de Loja (2011) demonstrate courts' willingness to enforce these rights, but institutional and political challenges remain.

4. CONCLUSION

This research demonstrates that legal personhood beyond the human is both theoretically defensible and practically necessary in the Anthropocene. Legal personhood is social and legal construction, not natural category tied to human biology or consciousness. Throughout history, law has expanded personhood to previously excluded groups and non-human entities, revealing personhood's malleability. Theoretical foundations supporting non-human legal personhood include relational ontology, Earth Jurisprudence, interest theory, and Indigenous legal philosophies. These frameworks challenge anthropocentric assumptions and provide alternative bases for recognizing nature as bearing intrinsic value and legal standing. Comparative analysis of

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New Zealand, India, Colombia, and Ecuador reveals diverse approaches to implementing ecological personhood, each with distinct rationales, mechanisms, and outcomes. Recognizing non-human legal persons transforms rights discourse, environmental governance, and legal theory. It enables nature to participate in legal processes affecting its interests, creates accountability mechanisms for environmental protection, and encourages long-term ecological thinking. While challenges around implementation, conceptual coherence, and rights conflicts persist, these difficulties are not insurmountable and parallel challenges faced when extending personhood to other previously excluded groups. The implications extend beyond environmental law to fundamental questions about law's purpose and foundations. In recognizing rivers, forests, and ecosystems as legal subjects rather than mere objects or resources, law acknowledges humans' embeddedness in and dependence upon ecological systems. This represents not incremental reform but paradigmatic shift toward post-anthropocentric legal theory grounded in ecological realities and multi-species justice. As ecological crises intensify, recognizing non-human legal personhood emerges not as radical experiment but as pragmatic necessity. The question is not whether law can accommodate non-human persons, but whether legal systems that fail to do so can remain legitimate or effective in protecting the conditions for flourishing of all life on Earth. Future legal development must move beyond anthropocentric paradigms toward relational frameworks that recognize humans as participants in, rather than masters of, Earth's community of life. Legal personhood beyond the human represents crucial step in this transformation, offering conceptual and practical tools for building legal systems adequate to ecological realities and just relationships across species boundaries.

5. LIMITATION

5.1 Scope and Generalizability This study focuses primarily on common law and constitutional systems in select jurisdictions (New Zealand, India, Colombia, Ecuador). While these represent important developments, they cannot capture the full diversity of legal approaches globally. Civil law systems, Islamic legal traditions, and other non-Western legal systems may conceptualize personhood differently. The findings may not be directly generalizable to all legal contexts without consideration of specific cultural, political, and legal traditions.

5.2 Methodological Constraints As doctrinal and theoretical research, this study lacks empirical data on implementation effectiveness and stakeholder experiences. Future research employing empirical methods (interviews with guardians, environmental outcomes assessment, case studies of specific enforcement actions) would complement

and strengthen these theoretical findings. The analysis of Indigenous legal traditions relies on published secondary sources rather than direct consultation with Indigenous knowledge holders, which may limit depth and authenticity of understanding. 5.3 Temporal Limitations Many legal frameworks examined are recent (post-2008), providing insufficient time to assess long-term effectiveness and sustainability. Longitudinal studies tracking implementation over decades will be necessary to evaluate whether non-human personhood achieves meaningful environmental protection or remains primarily symbolic.

Disciplinary Boundaries While this research attempts interdisciplinary synthesis, depth in each contributing field (legal theory, environmental ethics, Indigenous studies, ecological science) is necessarily limited. Specialists in each discipline may identify gaps or oversimplifications. Deeper engagement with specific disciplinary debates would enhance theoretical sophistication but exceeds the scope of this synthesis. 5.5 Political and Cultural Context The study cannot fully account for political dynamics, power relations, and cultural factors shaping implementation of non-human personhood. Legal recognition does not guarantee enforcement, and symbolic recognition may mask continued exploitation. Critical analysis of how economic interests, political ideologies, and social movements affect practical outcomes deserves greater attention. 5.6 Normative Assumptions This research proceeds from premise that extending legal personhood to non-human entities is desirable for environmental and ethical reasons. This normative commitment may limit critical examination of potential negative consequences or alternative approaches to environmental protection that do not rely on personhood framework.

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