Transnational Environmental Law, 12:2 (2023), pp. 343–365 © The Author(s), 2023. Published by Cambridge University Press.

doi:10.1017/S2047102523000079

ARTICLE

Experiments with the Extension of Legal Personality to Ecosystems and Beyond-Human Organisms: Challenges and Opportunities for Company Law

David J. Jefferson,* Elizabeth Macpherson** and Steven Moe***

First published online 30 May 2023

Abstract

In recent years, a number of jurisdictions have recognized diverse ecosystems and other-than-human organisms as legal persons. From national constitutions and legislation to subnational judicial decisions and ordinances, these legal experiments have extended legal personality to riverine and terrestrial ecological communities, including vast geographical areas and the beyond-human beings that inhabit them. A growing body of literature engages with these developments and, in particular, their consequences for states and governments. However, few analyses have considered the practical implications they may present for private organizations operating under company law. We address this research gap and explore potential challenges and opportunities that the recognition of ecosystems as legal persons may create for private legal persons, especially corporations. We also discuss the possible impacts and opportunities of the expansion of legal personality on company law and corporate practice more broadly, arguing for a reimagination of company law. This reimagination embraces an ethics of reciprocity, responsibility, and relationality between corporate entities, and ecological and human communities.

Keywords: Ecosystem rights, Beyond-human rights, Legal personality, Rights of Nature, Company law

* University of Canterbury, Faculty of Law, Christchurch (New Zealand).
Email: david.jefferson@canterbury.ac.nz (Corresponding author).

** University of Canterbury, Faculty of Law, Christchurch (New Zealand).
Email: Elizabeth.macpherson@canterbury.ac.nz.

*** Parry Field Lawyers Ltd., Christchurch (New Zealand).
Email: stevenmoe@parryfield.com.

The authors acknowledge the Indigenous peoples who hold power and authority over the ecosystems and other beyond-human beings discussed in this article, particularly Ngāi Tūāhuriri as *mana whenua* where the authors are based. The authors are grateful for research assistance provided by Charlotte Keir, Alexandra Parkinson, and Karen Grant, and for the helpful comments on earlier drafts of the article given by Erin Matariki Carr. Elizabeth Macpherson further acknowledges that she is funded by the Research Council of Norway for the project 'Riverine Rights: Exploring the Currents and Consequences of Legal Innovations on the Rights of Rivers' (supported by Norges Forskningsråd (Grant no. 301916)). Finally, the authors wish to acknowledge their appreciation for the feedback on earlier drafts of this article that the anonymous reviewers for *TEL* provided. Their comments and suggestions led to substantial improvements to this work.
Competing interests: The authors declare none.

1. INTRODUCTION

Since the start of the 21st century, legal frameworks ranging from local ordinances to national constitutions and judicial decisions have recognized diverse ecosystems and other-than-human organisms as persons. These innovations have captured the imaginations of civil society organizations and academic researchers worldwide. Lengthy discussions have been generated about whether 'Rights of Nature'[1] or 'posthumanist'[2] constitutional, legislative, and judicial reforms could precipitate a 'legal ontological turning'.[3] These discussions foresee a recalibration of the material relations that unfold between different kinds of being, including humans and other lively inhabitants of ecological communities.[4] The analyses conducted to date provide fertile terrain to think with,[5] leading to ideas about how the law might begin to redefine

---

1 Legal doctrinal and theoretical research on the Rights of Nature has focused on analyzing the various constitutional, statutory, and judicial models for recognizing the legal subjectivity of ecosystems that have emerged in countries as diverse as Ecuador, India, the United States, and Aotearoa New Zealand. Although early scholarship lauded ecosystem rights laws as a 'revolution that could save the world' (D.R. Boyd, *The Rights of Nature: A Legal Revolution that Could Save the World* (ECW Press, 2017)), these laws have also been criticized for conceiving of nature as a universal subject, enabling states to invoke ecosystem rights to justify extractivism and suppress Indigenous life projects, subordinating gendered conceptualizations of Mother Earth to masculine heterosexual state authority, and naturalizing a Western/modern notion of rights to the detriment of local political ontologies: M. Tănăsescu, *Environment, Political Representation and the Challenge of Rights: Speaking for Nature* (Palgrave Macmillan, 2016); R. Lalander, 'Rights of Nature and the Indigenous Peoples in Bolivia and Ecuador: A Straitjacket for Progressive Development Politics?' (2014) 3(2) *Iberoamerican Journal of Development Studies*, pp. 148–72; C. Valladares & R. Boelens, 'Extractivism and the Rights of Nature: Governmentality, "Convenient Communities" and Epistemic Pacts in Ecuador' (2017) 26(6) *Environmental Politics*, pp. 1015–34. See also V. Marshall, 'Removing the Veil from the "Rights of Nature": The Dichotomy between First Nations Customary Rights and Environmental Legal Personhood' (2020) 1 *Australian Feminist Law Journal*, pp. 233–48; C. Jones, *New Treaty, New Tradition: Reconciling New Zealand and Māori Law* (Victoria University Press, 2016); W. Richardson & J.-A. McNeish, 'Granting Rights to Rivers in Colombia: Significance for ExtrACTIVISM and Governance', in J. Shapiro and J.-A. McNeish (eds), *Our Extractive Age: Expressions of Violence and Resistance* (Routledge, 2021); M. Tola, 'Between Pachamama and Mother Earth: Gender, Political Ontology and the Rights of Nature in Contemporary Bolivia' (2018) 118(1) *Feminist Review*, pp. 25–40; A. Rawson & B. Mansfield, 'Producing Juridical Knowledge: "Rights of Nature" or the Naturalization of Rights?' (2018) 1(1–2) *Environment and Planning E: Nature and Space*, pp. 99–119.

2 From a social science perspective and for the purposes of this article, posthumanism may be understood both as an emergent philosophical tradition that treats humans as connected to other beings in territorialized relations of mutual care, and a project in alternative knowledge formation that aims to de-centre human agency while acknowledging the discriminatory effects of intrahuman activities and interactions, and to reimagine what it means to be human in the Anthropocene: F. Ferrado, *Philosophical Posthumanism* (Bloomsbury Academic, 2019); R. Braidotti, *Posthuman Knowledge* (Polity Press, 2019); S. Alaimo, *Exposed: Environmental Politics and Pleasures in Posthuman Times* (University of Minnesota Press, 2016); A. Grear, E. Boulot, & I.D. Vargas-Roncancio, *Posthuman Legalities: New Materialism and Law Beyond the Human* (Edward Elgar, 2021); E. Boulot et al., 'Posthuman Legalities: New Materialism and Law Beyond the Human' (2021) 12(0) *Journal of Human Rights and the Environment*, pp. 1–12; E. Jones, 'Posthuman International Law and the Rights of Nature' (2021) 12(0) *Journal of Human Rights and the Environment*, pp. 76–102; M.-C. Petersmann, 'Response-abilities of Care in More-Than-Human Worlds' (2021) 12(0) *Journal of Human Rights and the Environment*, pp. 102–24; J. Käll, 'Critical Posthumanism, Justice, and Law', in S. Herbrechter et al. (eds), *Palgrave Handbook of Critical Posthumanism* (Palgrave Macmillan, 2020).

3 Boulot et al., ibid., p. 3.

4 Grear, Boulot & Vargas-Roncancio, n. 2 above.

5 The term 'think with', as used here, invokes the work of Isabelle Stengers and Vinciane Despret. It refers to the idea that, by taking the subjectivity of non-human beings seriously, research can become a process that

https://doi.org/10.1017/S2047102523000079 Published online by Cambridge University Press

or reject the assumption that human society and the environment are distinct and separate domains.

While we acknowledge the importance of prior research on the extension of legal personality to ecosystems and the beyond-human beings[6] that comprise them, we are concerned that these works too often have focused on abstract ideas and values rather than pragmatic implications. In other words, our collective ability to reimagine legal personality has outpaced our capacity to understand the practical implications of these novel imaginaries. This article addresses this research gap and focuses on how the recognition of ecosystems and other beyond-human beings as legal persons might affect other legal persons, specifically companies.[7] Our purpose is not to discuss the moral or philosophical dimensions of creating a legal equivalence between humans, ecosystems, beyond-human organisms, and corporate entities, but rather to understand how the expansion of legal personality may suggest the need to reimagine, especially, company law.

Our work builds upon diverse interdisciplinary research on legal experiments with the extension of personality to ecosystems and beyond-human beings, which may be classified into three broad categories. One branch of scholarship centres on instances where 'nature' – a universal concept which suggests the reification of the modernist dichotomization of human society and the environment[8] – has been recognized to have legal rights, such as the right to regeneration and restoration.[9] A second body

assembles various intelligences, including those of animals, plants, and ecosystems. In other words, instead of 'thinking about' nature as a monolithic construct and whether it should have legal rights, we can 'think with' or 'think alongside' an ecosystem to understand how its interests intersect with our own and the kinds of obligation that the different inhabitants of the ecosystem may owe to each other; see I. Stengers, V. Despret & Collective, *Women Who Make a Fuss: The Unfaithful Daughters of Virginia Woolf* (trans. A. Knutson, Univocal, 2014).

6 In this article we use the terms 'beyond-human beings' and 'beyond-human organisms' to describe instances where legal personality has been recognized for other-than-human constituents of the natural world. Examples of beyond-human beings could include whole species of plants or animals, or individuals within a species. For simplicity, the article focuses primarily on the recognition of whole ecosystems as legal persons, because this formulation reflects recent legal developments in Aotearoa New Zealand, the country where the authors are based. While we acknowledge that similar questions about the expansion of legal subjectivity may also arise in the context of, for instance, artificial intelligence, we do not explore these in this article. Furthermore, we use the term 'non-human' in the context of legal subjectivity to refer to human-created entities such as companies that have been recognized as persons in law.

7 The argument developed in this article is specifically relevant to incorporated companies – that is, those that operate 'not merely as an entity with an independent legal existence from its shareholders but an *object* which has been effectively cleansed of them': P. Ireland, 'Capitalism without the Capitalist: The Joint Stock Company Share and the Emergence of the Modern Doctrine of Separate Corporate Personality' (1996) 17(1) *The Journal of Legal History*, pp. 41–73, at 41. In other words, our analysis centres on the kinds of entity that have proliferated since the English House of Lords case *Salomon* v. *Salomon and Co Ltd* asserted that even a 'one man company' is 'at law a different person altogether from the subscribers to the memorandum': *Salomon* v. *Salomon and Co Ltd* [1897] AC 22.

8 B. Latour, *Politics of Nature* (Harvard University Press, 2004).

9 E.g., R.F. Nash, *The Rights of Nature: A History of Environmental Ethics* (University of Wisconsin Press, 1989); P.D. Burdon, 'The Rights of Nature: Reconsidered' (2010) 49 *Australian Humanities Review*, pp. 69–89; M. Tănăsescu, 'The Rights of Nature in Ecuador: The Making of an Idea' (2013) 70(6) *International Journal of Environmental Studies*, pp. 846–61; M. Margil, 'Building an International Movement for Rights of Nature', in M. Maloney & P. Burdon (eds), *Wild Law: In Practice* (Routledge, 2014), pp. 149–60; S. Borràs, 'New Transitions from Human Rights to the Environment

https://doi.org/10.1017/S2047102523000079 Published online by Cambridge University Press

of literature focuses less on rights in the abstract and more on the significance of recognizing that specific ecosystems – such as rivers or terrestrial areas – have legal personality or subjectivity, or are conceptualized as living entities. Such studies generally take a place-based approach,[10] emphasizing that these legal reforms inherently intersect with local human biocultural rights[11] claims and political projects, including those led by Indigenous peoples.[12] Finally, a third area of study concerns the extension of legal personality to particular beyond-human beings, most notably species – of, for instance, plants or animals – or individual animals within a species.[13] In this

to the Rights of Nature' (2016) 5(1) *Transnational Environmental Law*, pp. 113–43; N. Rühs & A. Jones, 'The Implementation of Earth Jurisprudence through Substantive Constitutional Rights of Nature' (2016) 8(2) *Sustainability*, pp. 174–93; L.J. Kotzé & P. Villavicencio Calzadilla, 'Somewhere between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador' (2017) 6(3) *Transnational Environmental Law*, pp. 401–33; C.M. Kauffman & P.L. Martin, 'Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand' (2018) 18(4) *Global Environmental Politics*, pp. 43–62; C.M. Kauffman & P.L. Martin, *The Politics of the Rights of Nature: Strategies for Building a More Sustainable Future* (The MIT Press, 2021); D.P. Corrigan & M. Oksanen (eds), *Rights of Nature: A Re-Examination* (Routledge, 2021); M. Tănăsescu, *Understanding the Rights of Nature: A Critical Introduction* (Transcript Verlag, 2022).

[10] By 'place-based approach' we mean that studies focusing on the legal personality or subjectivity of particular ecosystems are not typically interested in identifying a universal, internationally deployable set of rights to which 'nature' should be entitled. Instead, these studies are concerned with how the recognition of certain natural entities such as rivers derives fundamentally from the historical and ongoing relationships that local (often Indigenous) people and groups have with these entities: e.g., L. Charpleix, 'The Whanganui River as Te Awa Tupua: Place-based Law in a Legally Pluralistic Society' (2018) 184(1) *The Geographical Journal*, pp. 19–30.

[11] By 'human biocultural rights' we invoke and build upon a concept developed by the Constitutional Court of Colombia in recognizing the Atrato River as a legal subject. In this context, biocultural rights may be understood as combining environmental conservation with respect for the human rights of Indigenous peoples and communitarian rights in relation to stewardship over natural resources. Stated differently, biocultural rights are collective rights that communities hold to carry out traditional roles related to environmental management, in accordance with local ontologies: E. Macpherson, J. Torres Ventura & F. Clavijo Ospina, 'Constitutional Law, Ecosystems, and Indigenous Peoples in Colombia: Biocultural Rights and Legal Subjects' (2020) 9(3) *Transnational Environmental Law*, pp. 521–40.

[12] E.g., M. Tănăsescu, 'Rights of Nature, Legal Personality, and Indigenous Philosophies' (2020) 9(3) *Transnational Environmental Law*, pp. 429–53; E. O'Donnell et al., 'Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature' (2020) 9(3) *Transnational Environmental Law*, pp. 403–27; Macpherson, Torres Ventura & Clavijo Ospina, n. 11 above; E. Macpherson, 'The (Human) Rights of Nature: A Comparative Study of Emerging Legal Rights for Rivers and Lakes in the United States of America and Mexico' (2020) 31(2/3) *Duke Environmental Law and Policy Forum*, pp. 327–77; M. RiverOfLife et al, 'Hearing, Voicing and Healing: Rivers as Culturally Located and Connected' (2021) 38(3) *River Research and Applications*, pp. 422–34; R.J. Coombe & D.J. Jefferson, 'Posthuman Rights Struggles and Environmentalisms from below in the Political Ontologies of Ecuador and Colombia' (2021) 12(2) *Journal of Human Rights and the Environment*, pp. 177–204; E. Macpherson, 'Ecosystem Rights and the Anthropocene in Australia and Aotearoa New Zealand', in D. Amirante & S. Bagni (eds), *Environmental Constitutionalism in the Anthropocene: Values, Principles, Actions* (Routledge, 2022), pp. 168–86; A. Poelina et al., 'Regeneration Time: Ancient Wisdom for Planetary Wellbeing' (2022) 38(Special Issue 3–4) *Australian Journal of Environmental Education*, pp. 1–18.

[13] E.g., S.M. Wise, 'Legal Personhood and the Nonhuman Rights Project' (2010) 17(1) *Animal Law*, pp. 1–12; A. Pelizzon & M. Gagliano, 'The Sentience of Plants: Animal Rights and Rights of Nature Intersecting' (2015) 11(1) *Australian Animal Protection Law Journal*, pp. 5–14; I.D.V. Roncancio, 'Plants and the Law: Vegetal Ontologies and the Rights of Nature' (2017) 43(1) *Australian Feminist Law Journal*, pp. 67–87; S.M. Wise, 'The Struggle for the Legal Rights of Nonhuman Animals Begins: The Experience of the Nonhuman Rights Project in New York and Connecticut' (2018) 25(1) *Animal Law*, pp. 367–94; K. Silt, 'Rights of Nature, Rights of Animals' (2020) 134(5) *Harvard Law Review*, pp. 276–85; A. Bertenthal, 'Standing Up for Trees: Rethinking Representation in a Multispecies Context' (2020) 32(3) *Law & Literature*, pp. 355–73; V. Kurki, 'Legal Personhood and Animal

article we draw upon all three of these disparate bodies of knowledge. This scholarship helps us to consider how the expansion of legal personality to transcend narrow anthropocentrism might have an impact on the constitution and practices of corporate persons.

To the extent that prior research has sought to elucidate the pragmatic implications of the extension of legal personality to ecosystems and beyond-human organisms, these works have narrowly examined the role of state-based institutions in developing, implementing, and enforcing new laws. Few studies have examined the expansion of legal personality from a private law perspective, meaning that the effects these reforms could have on the constitution and practices of corporate entities are under-theorized. This is the case even where recent works have investigated the private interests of 'nature' as a right-holder,[14] and how to understand the kind of legal personality that ecosystems and beyond-human beings are recognized to have.[15]

In contrast to the public law focus of most earlier works, the present article investigates the practical implications of the extension of legal personality to ecosystems and beyond-human organisms for company law. These types of legal reform could potentially create new opportunities for synergies to be forged between different human groups to limit environmental harm and to foster sustainable enterprise. Such opportunities may hold particular promise when these reforms are coupled with or motivated by efforts to reformulate business in a way that would abandon exclusive profit seeking and instead focus on purpose.[16] However, as legal systems embrace a future in which ecosystems, beyond-human organisms, and companies are all recognized as legal persons, a number of new challenges may arise for corporate practice.

The remainder of this article is structured as follows. Section 2 briefly reviews existing literature on legal personality for ecosystems and beyond-human organisms, and demonstrates the need for research on the implications of these new legal imaginaries on company law and practice. In response to this need, Section 3 highlights differences in how the law alternately conceives companies and ecosystems as persons, and presents the case study of Aotearoa New Zealand, the country where the authors are based.[17] In doing so, Section 3 identifies certain tensions and discrepancies that

Rights' (2021) 11(1) *Journal of Animal Ethics*, pp. 47–62; E. Fitz-Henry, 'Multi-Species Justice: A View from the Rights of Nature Movement' (2022) 31(2) *Environmental Politics*, pp. 338–59.

[14] L. Burgers, 'Private Rights of Nature' (2022) 11(3) *Transnational Environmental Law*, pp. 463–74; B. Hoops, 'What If the Black Forest Owned Itself? A Constitutional Property Law Perspective on Rights of Nature' (2022) 11(3) *Transnational Environmental Law*, pp. 475–500; A. Putzer et al., 'The Rights of Nature as a Bridge between Land-Ownership Regimes: The Potential of Institutionalized Interplay in Post-Colonial Societies' (2022) 11(3) *Transnational Environmental Law*, pp. 501–23.

[15] V.A.J. Kurki, 'Can Nature Hold Rights? It's Not as Easy as You Think' (2022) 11(3) *Transnational Environmental Law*, pp. 525–52.

[16] E.g., R. Gulati, *Deep Purpose: The Heart and Soul of High-Performance Companies*. (Penguin, 2022); A. Barlow, *Purpose Delivered: Bigger Benefits for Society and Bigger Profits for Business: A CEO's Experience* (Routledge, 2021); R. Hardyment, *The Wellbeing Purpose: How Companies Can Make Life Better* (Routledge, 2018).

[17] The authors acknowledge that given their positionality as non-Indigenous legal scholars and practitioners residing in Aotearoa New Zealand, they necessarily view legal developments that are based in part on *te*

https://doi.org/10.1017/S2047102523000079 Published online by Cambridge University Press

characterize the differential treatment of companies-as-persons and ecosystems-as-persons under the law. This section also discusses the limitations of prior approaches to governing the impacts of company law and corporate practice on the vitality of ecosystems and their beyond-human constituents. Section 4 embeds the issues discussed throughout the article in a thought experiment designed to illustrate the areas of uncertainty, pragmatic problems, and nascent opportunities and synergies that may arise in legal systems where companies, ecosystems, and beyond-human beings are all understood as persons. Section 5 concludes by offering reflections and points for future research and practice to advance the project of reimaging company law and corporate practice in the context of expanded legal personality for ecosystems and beyond-human beings.

2. THE COMPANY LAW DIMENSIONS OF LEGAL PERSONALITY FOR ECOSYSTEMS AND BEYOND-HUMAN BEINGS: SETTING A RESEARCH AGENDA

To date, research on laws that extend legal personality to ecosystems and their beyond-human constituents has focused primarily on the state's role in creating and enforcing the rights and entitlements of these newly recognized persons. The focus on the role of governments in the extension of legal personality has occurred even where reforms acknowledge the authority of or establish collaborative governance roles for Indigenous groups in relation to certain ecosystems conceived as persons.[18] For example, in analyzing the development of the law of Aotearoa New Zealand, research has centred on how political sovereignty is allocated between different Māori tribal governance organizations and the state,[19] rather than on the practical implications that the expansion of legal personality has for existing kinds of legal person, even where tribal organizations themselves operate corporate entities.

With scholarly attention focused on the role of the state in the expansion of legal personality, in-depth studies have not been conducted to explore the implications these changes may have for company law. This is a notable gap in the literature, especially given that early rights of nature scholarship invoked corporate personality as an analogy to justify and normalize the extension of legal personality to ecosystems and beyond-human organisms. These works aimed to demonstrate that the conceptualization of non-human entities as persons in the law was already commonplace, so recognizing beyond-human organisms such as trees as persons should be theoretically and technically

ao Māori from an outsider's perspective, and that they are not speaking for or on behalf of *tangata whenua*.

[18] E.g., the Te Urewera Act 2014 declares Te Urewera, formerly a national park in Aotearoa New Zealand, to be a legal entity with all the rights, powers, duties, and liabilities of a legal person (s. 11). The Act further establishes a Te Urewera Board (s. 16), whose purposes are to act on behalf of and in the name of Te Urewera and to provide governance for Te Urewera (s. 17). Under the Act, the Board consists of 8 members, 6 of whom are appointed by Ngāi Tūhoe *iwi*, and 3 of whom are appointed by government ministers (s. 21).

[19] Tănăsescu, n. 12 above.

https://doi.org/10.1017/S2047102523000079 Published online by Cambridge University Press

straightforward.[20] Building on these works, more recent analyses have proposed that the extension of legal personality to ecosystems and other beyond-human beings could operate as a strategy to halt and remediate environmental damage that corporations perpetrate. Such proposals are based on the argument that the legal rights of ecosystems, beyond-human organisms, and companies should be understood as co-equal.[21]

The assumption that companies, ecosystems, and other beyond-human persons all share an analogous form of legal personality is supported by the fact that many laws which recognize the personality of ecosystems or beyond-human organisms have been developed using the architecture of existing corporate legal forms. These forms of personality all have Western origins, with roots in Roman and English law.[22] The idea that ecosystems, particular species of plants or animals, Mother Earth or Pachamama are persons draws inspiration from diverse Indigenous cosmologies.[23] However, the forms of personality that have been recognized in settler-colonial legal systems are often deeply entwined with company law concepts that emerged in Europe. Because of this, in some instances the expansion of legal personality has required Indigenous groups to compromise, strategically accepting corporate models where an exclusively first-laws approach to environmental governance would be difficult to attain.[24]

An example of this dynamic is found in the Aotearoa New Zealand Te Awa Tupua Act, which declares the Whanganui River to be a legal person. In addition, the Act establishes several statutory offices, the collective goal of which is to centre the river's interests and peoples' relationships with it in a complex collaborative governance regime. These entities include Te Pou Tupua, an office to serve as the human face of the river,[25] an advisory group to provide advice and support Te Pou Tupua,[26] and a

---

[20] See, e.g. C. Stone, 'Should Trees Have Standing: Toward Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review*, pp. 450–501, at 452 (noting that '[t]he world of the lawyer is peopled with inanimate right-holders: trusts, corporations, joint ventures, municipalities, Subchapter R partnerships, and nation-states, to mention just a few'); R. Nash, *The Rights of Nature: A History of Environmental Ethics* (University of Wisconsin Press, 1989), p. 213 (arguing that 'each time there is a movement to confer rights onto some new "entity", the proposal is bound to sound odd or frightening or laughable. This is partly because until the rightless thing receives its rights, we cannot see it as anything but a *thing* for the use of "us" – those who are holding rights at the time').

[21] E. Fitz-Henry, 'Challenging Corporate "Personhood": Energy Companies and the "Rights" of Non-Humans' (2018) 41(S1) *PoLAR: Political and Legal Anthropology Review*, pp. 85–102.

[22] S. Williston, 'History of the Law of Business Corporations Before 1800' (1888) 2(3) *Harvard Law Review*, pp. 105–24.

[23] J. Ruru, 'First Laws: Tikanga Māori in/and the Law' (2018) *Māori Law Review*; H. White, 'Indigenous Peoples, the International Trend Toward Legal Personhood for Nature, and the United States' (2018) 43(1) *American Indian Law Review*, pp. 129–65; M. Akchurin, 'Constructing the Rights of Nature: Constitutional Reform, Mobilization, and Environmental Protection in Ecuador' (2015) 40(4) *Law & Social Inquiry*, pp. 937–68; A. Pelizzon, 'Earth Laws, Rights of Nature and Legal Pluralism', in Maloney & Burdon, n. 9 above, pp. 176–89.

[24] E.g., in the context of Aotearoa New Zealand, see K. Sanders, '"Beyond Human Ownership"? Property, Power and Legal Personality for Nature in Aotearoa New Zealand' (2018) 30(2) *Journal of Environmental Law*, pp. 207–34; B. Coombes, 'Nature's Rights as Indigenous Rights? Mis/recognition through Personhood for Te Urewera' (2020) (1–2) *Espace Populations Sociétés*; A. Geddis & J. Ruru, 'Places as Persons: Creating a New Framework for Māori-Crown Relations', in J. Varuhas (ed.), *The Frontiers of Public Law* (Hart, 2019), 255–74; Macpherson, n. 12 above.

[25] Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s. 18.

[26] Ibid., s. 27.

https://doi.org/10.1017/S2047102523000079 Published online by Cambridge University Press

strategy group composed of human persons and organizations with interests in the Whanganui River.[27] Each of these bodies operates according to its own institutional structure and processes, and can be expected regularly to interact with a range of private companies, charities, and other tribal and governmental organizations that also have independent legal personalities. Therefore, although recognition of the Whanganui River as a legal person occurred under the auspices of state institutions, in practice many of the actions that this ecological community undertakes will necessarily occur within the remit of company law.

As the Whanganui River example demonstrates, there is a need for research that explores how ecosystems and corporate entities interrelate as persons, towards a reimagination of relationships between human and ecological communities that could mitigate both environmental harm and socio-cultural inequity. In jurisdictions that have recognized the personality of ecosystems, studies conducted to date have focused mainly on how new laws empower state systems by giving governmental agents additional tools to curb the excesses of the private sector, for example, when Rights of Nature regimes are invoked to hold companies accountable for environmental harm.[28] Other studies have described how diverse constituencies in several jurisdictions, including Indigenous peoples and ethnic minority groups, have asked courts to rely on statutory and constitutional frameworks that recognize the personality of ecosystems in resolving legal claims for redress of corporate abuses perpetrated against human and ecological communities.[29]

While this research is important, and although the actions taken by governments to enact and enforce the rights of ecosystems and beyond-human beings are critical, these initiatives are not sufficient to stem the continued alienation and appropriation of biological, genetic, and geological diversity conceived as resources for the purposes of capital accumulation.[30] Isolated responsive actions, where citizens and communities rely on the expansion of legal personality to hold companies to account for environmental harm caused by profit-seeking behaviour will likewise not suffice. We propose a reimagination of company law that would embrace an ethics of responsibility, reciprocity, and relationality with the human and ecological communities in which companies do business. This means that legal systems must recognize the different kinds of obligation and benefit that emerge out of the embeddedness of relationships between corporate entities, humans, and beyond-human beings as situated in specific environments. Legal systems should both ensure that the duties of companies to limit and reverse

[27] Ibid., s. 29.

[28] See, e.g., L. Cano Pecharroman, 'Rights of Nature: Rivers that Can Stand in Court' (2018) 7(1) *Resources*, pp. 13–27; C.M. Kauffman & P.L. Martin, 'Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian Lawsuits Succeed and Others Fail' (2017) 92(1) *World Development*, pp. 130–42; H.M. Babcock, 'A Brook with Legal Rights: The Rights of Nature in Court' (2016) 43(1) *Ecology Law Quarterly*, pp. 1–52.

[29] See, e.g., Coombe & Jefferson, n. 12 above; Macpherson, Torres Ventura & Clavijo Ospina, n. 11 above; Babcock, ibid.

[30] D. Harvey, *The New Imperialism* (Oxford University Press, 2003).

https://doi.org/10.1017/S2047102523000079 Published online by Cambridge University Press

ecological degradation are upheld, and encourage companies to define and adhere to purpose statements that aim to achieve positive social and environmental outcomes.

3. THE NATURE OF COMPANIES AND ECOSYSTEMS AS LEGAL PERSONS

In the first two sections of this article we established that nearly all research conducted to date on the extension of legal personality to ecosystems and beyond-human persons has focused on the role of governments in balancing the rights and interests of different legal persons. Acknowledging the importance of this work, we also argued that more attention needs to be paid to the practical implications that the expansion of legal subjectivity will have for company law and corporate practice. We then, in the following section, compare how ecosystems and companies are differentially conceived as legal persons in one specific jurisdiction, namely Aotearoa New Zealand. The purpose of this analysis is to demonstrate that despite certain differences, ecosystems and companies in New Zealand commonly rely on their human representatives to act in their best interests. As the section will show, determining exactly what constitutes the best interests of a particular company, ecosystem, or beyond-human being presents a number of challenges, especially when the interests of these different legal persons diverge.

3.1. *The Case of Aotearoa New Zealand*

Aotearoa New Zealand now recognizes diverse categories of legal person, which include well-known types of human-created entity such as cooperatives, companies, corporations, and charities, in addition to riverine and terrestrial ecosystems. Although New Zealand law establishes that all legal persons are entitled to most of the same essential rights as human persons,[31] several important differences distinguish how distinct classes of legal person are created and maintained. An analysis of these differences will be helpful in beginning to understand the pragmatic implications that recent experiments with legal personality for ecosystems in Aotearoa may have for the constitution and practices of corporate persons.

One of the most significant features of the corporate form is the ease with which companies can be created. All that is needed in Aotearoa New Zealand to establish a company is a name, a share, a shareholder, and a director.[32] Any human or legal person, alone or with others, may apply to register a company.[33] There is no requirement for the new entity to articulate its purpose or mission, or to adopt a constitution according to which it must operate. The minimal vetting that registration applications undergo enables a company to be established online within an hour. These parameters

[31] New Zealand Bill of Rights Act 1990, s. 29 ('Except where the provisions of this Bill of Rights otherwise provide, the provisions of this Bill of Rights apply, so far as practicable, for the benefit of all legal persons as well as for the benefit of all natural persons').

[32] New Zealand Companies Act 1993, s. 10.

[33] Ibid., s. 11.

https://doi.org/10.1017/S2047102523000079 Published online by Cambridge University Press

mirror those of other common law jurisdictions,[34] and the flexibility of the company form allows for the generation of an effectively boundless milieu of entities, which can relate to human and beyond-human persons in myriad ways.

Of course, like other types of legal person, companies must act through their human representatives. Given this dependence on their human constituents, the law typically sets certain parameters for the relationship between companies and the human persons that run them. The Companies Act of Aotearoa New Zealand stipulates that, in general, shareholders are not liable for obligations undertaken by a company in which they hold shares.[35] At the same time, directors have the duty to act in good faith and according to what the director believes is in the company's best interests.[36] Directors are also held to a standard of reasonableness, such that they must act with the care, diligence, and skill that a reasonable director would exercise in the same circumstances.[37] If these obligations are not upheld, shareholders can remove a director from office,[38] or bring actions against the director for breach of duties.[39] Shareholders may also bring actions against the company itself for similar breaches.[40]

In contrast to the situation of companies, where formation and governance requirements are generally established by statute and implemented through private action, governments worldwide have developed diverse strategies to extend legal personality to ecosystems and beyond-human organisms. Depending on the jurisdiction, these new legal persons have been created through constitutional, legislative, and judicial lawmaking processes at different levels of governance. The power to create new beyond-human legal persons typically lies exclusively in public institutions rather than the private sector. To date, no country has established a systematic process that would allow private individuals or groups to apply for the registration of a particular ecosystem (such as a forest or a river) or beyond-human organism (such as a plant or animal) as a legal person, even while this is possible for the establishment of companies, charities, and other non-human entities. Although an overarching legal framework in Aotearoa New Zealand enables the creation of an unlimited number of new corporate legal persons, there are only two instances where legal personality has been formally extended to specific ecosystems, which occurred through comprehensive acts of Parliament.[41]

---

[34] For Australia, see Corporations Act 2001, s. 117; for Canada, see Canada Business Corporations Act (R.S.C. 1985, c. C-44), ss. 5–6; for the United Kingdom, see Companies Act 2006, ss. 7–9.

[35] New Zealand Companies Act 1993, s. 97.

[36] Ibid., s. 131.

[37] Ibid., s. 137.

[38] Ibid., s. 156.

[39] Ibid., s. 169.

[40] Ibid., s. 171.

[41] It is expected that within the next several years, a third beyond-human person will be recognized as a legal person through legislation in Aotearoa New Zealand. This beyond-human person is Ngā Maunga / Mount Taranaki: Ngā Iwi o Taranaki and the Crown, Te Anga Pūtakerongo mō Ngā Maunga o Taranaki, Pouākai me Kaitake / Record of Understanding for Mount Taranaki, Pouākai and the Kaitake Ranges, 20 Dec. 2017, available at: https://www.govt.nz/assets/Documents/OTS/Taranaki-Maunga/Taranaki-Maunga-Te-Anga-Putakerongo-Record-of-Understanding-20-December-2017.pdf. Furthermore, there are other rivers and lakes in Aotearoa New Zealand that have been recognized as

https://doi.org/10.1017/S2047102523000079 Published online by Cambridge University Press

In contrast to other jurisdictions – such as Ecuador, where legal reforms were driven at least partially by the environmentalist agenda of a global movement that advocated the recognition of legal rights for 'nature' conceived as a universal construct[42] – the extension of legal personality to riverine and terrestrial ecosystems in Aotearoa New Zealand arose out of place-based political settlements of historical Te Tiriti o Waitangi (Treaty of Waitangi) claims by specific *iwi* (Māori tribal authorities). The first of these culminated in the Te Urewera Act of 2014, which recognized that land in a former national park in the region of Te Urewera has all the rights, powers, duties, and liabilities of a legal person.[43] Subsequently, Parliament passed the Te Awa Tupua Act in 2017, which conceives of the Whanganui River as a legal person with all the rights, powers, duties, and liabilities that legal personality entails.[44]

These laws created various statutory offices responsible for acting on behalf of Te Urewera and the Whanganui River respectively. According to their design, the human representatives who speak for and act on behalf of Te Urewera are the members of the Te Urewera Board,[45] which comprises six people appointed by the Ngāi Tūhoe *iwi* and three people appointed by government ministers.[46] Similarly, the 'human face' of the Whanganui River is Te Pou Tupua, an office of two people, one nominated by the Whanganui *iwi* and the other by the Crown.[47]

Although they are grounded in distinct legislative frameworks, the New Zealand laws that recognize the legal personality of companies and particular ecosystems commonly require that the human representatives of these entities act in the best interests of the company or ecosystem. For Te Urewera and the Whanganui River, these interests are statutorily defined. Specifically, the purpose of the Te Urewera Act is to strengthen and maintain the connection between the Tūhoe people and Te Urewera; preserve the natural features and beauty of Te Urewera, the integrity of its ecological systems and biodiversity, and its historical and cultural heritage; and provide for Te Urewera as a place for public use and enjoyment.[48] This detailed purpose statement, coupled with the management plan and the management values it contains,[49] was designed to enable the evaluation – including by the courts, if necessary – of whether actions taken by human persons on behalf of Te Urewera are appropriate and in its best interests.

---

living entities and ancestors under the care of related (Indigenous) people, such as the Treaty of Waitangi claims settlement arrangements for the Waikato River: Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Sch. 1, s. 1.

42 Tănăsescu, n. 12 above, p. 448.

43 Te Urewera Act 2014, s. 11(1).

44 Te Awa Tupua (Whanganui River Claims Settlement) Act, s. 14.

45 Te Urewera Act 2014, s. 17.

46 Ibid., s. 21.

47 Te Awa Tupua (Whanganui River Claims Settlement) Act, s. 20.

48 Ibid., s. 4.

49 Te Kawa o Te Urewera (The Te Urewara Management Plan) sets forth a plan to manage the complex interrelationship between human persons and Te Urewera towards the end of achieving a 'just life'. Doing so disrupts the notion that human beings are superior to the natural world and its beyond-human inhabitants: Te Urewara Board, 'Te Kawa o Te Urewera' (2017), p. 15, available at: https://www.ngaituhoe.iwi.nz/te-kawa-o-te-urewera.

https://doi.org/10.1017/S2047102523000079 Published online by Cambridge University Press

Similarly, Te Pou Tupua is required by the Te Awa Tupua Act to uphold the interests of the Whanganui River,[50] and to promote and protect its health and well-being.[51] The effectiveness of Te Pou Tupua in fulfilling its responsibilities can be evaluated based on the extent to which the office adheres to Te Pā Auroa, a framework under the Te Awa Tupua Act, which, among other elements, sets out a series of intrinsic values that represent the essence of the Whanganui River called Tupua Te Kawa.[52] These values include the proverb '*Ko au te Awa, ko te Awa ko au*', or 'I am the River and the River is me', which expresses the inalienable connection that local *iwi* and *hapū*[53] have with the Whanganui River, and the responsibilities that these peoples owe to maintain the health and well-being of the river.[54]

3.2. *Issues with Determining the Best Interests of Legal Persons*

The detailed purpose statements in the Te Urewera Act and the Te Awa Tupua Act, coupled with their associated management frameworks and values, suggest that it should be relatively easy to determine whether a human representative has acted in the best interests of these legal persons. However, determining the best interests of a particular ecosystem or beyond-human organism will always be subject to the limitations of human perception, which itself is contingent upon socio-cultural and political values that may diverge across various groups, and may evolve over time. For instance, Te Urewera's interest in biodiversity and cultural heritage protection may conflict with its interest in ensuring that its lands remain open to visitors for public use and enjoyment.

In Aotearoa New Zealand it also may be difficult to discern whether a company's human representatives have acted in its best interests, although for different reasons. Unlike the Te Urewera and Te Awa Tupua statutes, the Companies Act does not require any object or purpose statement to register a company. Historically, Aotearoa New Zealand, like other common law jurisdictions such as the United Kingdom (UK) and Australia,[55] did mandate that upon registration, the memorandum of association of a company needed to include a statement of the objects or purposes of the company.[56] This requirement, together with the 'ultra vires rule', was designed to protect the company's shareholders and third parties who deal with the company by limiting

[50] Te Awa Tupua (Whanganui River Claims Settlement) Act, s. 19(2).

[51] Ibid., s. 19(1)(c).

[52] Ibid., Part 2.

[53] The term '*hapū*' refers to Māori clans or descent groups; multiple *hapū* may join together to form an *iwi*, which is the largest political grouping in Māori society: Te Ara Encyclopedia of New Zealand, 'Tribal Organisation', available at: https://teara.govt.nz/en/tribal-organisation/page-1.

[54] Te Awa Tupua (Whanganui River Claims Settlement) Act, s. 13(c). See also M. Cribb, J.P. Mika & S. Leberman, 'Te Pā Auroa nā Te Awa Tupua: The New (But Old) Consciousness Needed to Implement Indigenous Frameworks in Non-Indigenous Organisations' (2022) 18(4) *AlterNative: An International Journal of Indigenous Peoples*, pp. 566–75.

[55] M. Worthington & P. Spender, 'Constructing Legal Personhood: Corporate Law's Legacy' (2021) 30(3) *Griffith Law Review*, pp. 348–73, at 358–9.

[56] Companies Act 1955, s. 14(1)(b).

https://doi.org/10.1017/S2047102523000079 Published online by Cambridge University Press

the possibility that directors might inappropriately manage shareholder and third party funds.[57]

Over time, however, the business purpose requirement and the ultra vires rule came to be regarded as problematic because of the constraints they placed on the ability of companies to expand their business activities and transact with third parties. In the latter half of the 20th century, such provisions were abolished or circumscribed across common law jurisdictions.[58] Critics argued that the business purpose requirement and the ultra vires rule had proved cumbersome to implement and enforce, both because they prohibited companies from altering the objects they enumerated in their original memoranda of incorporation, and because it was often impractical for parties involved in commercial transactions with a company to ascertain whether the company's stated purpose would permit the transaction to proceed.[59] To address these issues, companies began to draft broad and exhaustive memoranda of association, enabling them to engage in any conceivable activity and thus rendering ultra vires protection illusory.[60]

While the removal of the business purpose requirement from laws that recognize legal personality for companies in Aotearoa New Zealand and other countries may be understood as an attempt to address the problems associated with the ultra vires rule, these changes also occurred in the context of the rise of 'shareholder primacy theory'. According to this notion, acting in a company's best interest is equated to maximizing financial returns for shareholders.[61] Although this theory became widespread in the 1960s and 1970s, it remains controversial. The idea of shareholder primacy ignores that the historical evolution of the corporate form was tied to the goal of increasing the welfare of society as a whole, and not just that of a company's shareholders. In addition, a narrow focus on profit generation overlooks what economists term 'negative externalities', such as environmental degradation caused by unsustainable business activities.[62] Criticisms of shareholder primacy theory align with similar condemnations of the assumption that unlimited capitalist economic growth is possible and desirable,[63] and of the failure of the profit motive to yield a sustainable society.[64]

Striking the purpose requirement from legal frameworks for company formation has been interpreted as a strategy to enhance the flexibility of corporations as vehicles for commercial enterprise.[65] However, this change also created uncertainty in relationships

[57] R. Partridge, 'Legislation Comment: Ultra Vires, Directors' Duties and the Companies Amendment Act (No. 2) 1983' (1984) 5(1) *Auckland University Law Review*, pp. 1–121, at 75.

[58] S.J. Leacock, 'The Rise and Fall of the Ultra Vires Doctrine in the United States, United Kingdom, and Commonwealth Caribbean Corporate Common Law: A Triumph of Experience over Logic' (2006) 5(1) *DePaul Business & Commercial Law Journal*, pp. 67–104.

[59] P.J. McAloon, 'The Ultra Vires Rule with regard to Companies Incorporated under the Companies Act 1955' (LLM thesis, University of Canterbury (New Zealand), 1961), p. 123.

[60] Partridge, n. 57 above, p. 75.

[61] M. Friedman, *Capitalism and Freedom* (The University of Chicago Press, 1982), p. 112.

[62] B. Sjåfjell & M.B. Taylor, 'Clash of Norms: Shareholder Primacy vs. Sustainable Corporate Purpose' (2019) 13(3) *International and Comparative Corporate Law Journal*, pp. 40–66.

[63] J.J. Kassiola, *The Death of Industrial Civilization: The Limits to Economic Growth and the Repoliticization of Advanced Industrial Society* (Suny Press, 1990).

[64] K. Lux, 'The Failure of the Profit Motive' (2003) 44(1) *Ecological Economics*, pp. 1–9.

[65] Worthington & Spender, n. 55 above, p. 358.

https://doi.org/10.1017/S2047102523000079 Published online by Cambridge University Press

between the company and other legal persons, particularly where interests other than those of the company's shareholders are considered.[66] If, upon registration, the company does not state a clear purpose to guide its actions, it may be difficult for company directors, employees, and other stakeholders to connect around a sense of shared mission, allowing profit generation to overtake other potential goals.[67]

In some places, the problems that can arise from the lack of a clearly articulated business purpose may be addressed through the creation of specialized company forms. In many states of the United States (US), for example, entities known as 'benefit corporations' or 'public-benefit corporations' can be established.[68] Unlike conventional companies, when acting in the best interests of a benefit corporation, a director must consider not only the company's shareholders but also its employees, suppliers, customers, communities, the local and global environment, and other factors.[69]

While most examples of benefit corporation legislation are found in the US, other jurisdictions – including several countries in Latin America, the European Union, and the UK – have either already enacted or are considering similar reforms.[70] Additional countries are considering modifying their legal frameworks for company formation to embrace some of the principles of benefit corporations. For instance, a Bill was introduced into the New Zealand Parliament in 2021 that would amend the Companies Act to allow corporate directors to consider environmental, social, and governance factors, such as reducing adverse environmental impacts in determining the company's best interests.[71] Furthermore, some Māori corporations in Aotearoa New Zealand include in their constitutions additional values, purposes, or processes reflective of Māori law and custom.[72]

While the benefit corporation and similar models may be gaining traction as a novel form of corporate personality in some jurisdictions, it is important to recognize that this model builds upon long-standing ideas associated with corporate social responsibility. This concept, and other adjacent theories for how businesses can monitor and mitigate their impacts on ecosystems,[73] have been widely discussed

---

66 Ibid.

67 S. Moe, *Laying Foundations for Reimagining Business: Essays* (Seeds Press, 2021), pp. 11–3.

68 Specifically, as of mid-2022, nearly 40 US states had enacted laws that allow for the establishment of benefit corporations: B Lab, 'Behind the Legal Requirement: How U.S. and Canada B Corps Embed Purpose into Their DNA', 24 Mar. 2022, available at: https://usca.bcorporation.net/zbtcz03z22bcm/behind-the-legal-requirement-how-u-s-and-canada-b-corps-embed-purpose-into-their-dna.

69 J. Hiller, 'The Benefit Corporation and Corporate Social Responsibility' (2013) 118(1) *Journal of Business Ethics*, pp. 287–301, at 293.

70 B Lab, 'The Policy #BehindtheB: How We're Creating New Rules for the Global Economic System', 17 Mar. 2022, available at: https://www.bcorporation.net/en-us/news/blog/behind-the-b-inside-policy-at-b-lab.

71 Companies (Directors Duties) Amendment Bill, 23 Sept. 2021.

72 E. Macpherson, 'Iwi Companies', in S. Watson et al. (eds), *Corporate Law in New Zealand* (Thomson Reuters, 2018), pp. 111–25.

73 E.g., the term 'corporate greening' has been coined to describe activities undertaken by businesses to introduce or reformulate policies, practices, and processes in order to address environmental issues such as pollution, recycling, and resource minimization: A. Crane, 'Corporate Greening as Amoralization' (2000) 21(4) *Organization Studies*, pp. 673–96. The analogous notion of 'corporate environmentalism' refers to the processes through which firms integrate environmental concerns into

since at least the 1950s.[74] Corporate social responsibility gained prominence in the 1990s and 2000s,[75] and today companies are increasingly considering the effects that their activities have on both human and ecological communities, and how they make decisions about what the company does and who those choices will affect.[76] Simultaneously, scholars are examining the intersections between corporate social responsibility, the principle of 'sustainability', and the relationships businesses have with a broad set of stakeholders (including human and ecological communities), instead of focusing narrowly on shareholder benefit.[77]

In theory, corporate policies and self-governance strategies grounded in corporate social responsibility or sustainability should be an important check on harm to human and ecological communities. However, prior analyses of corporate social responsibility have observed that there are fundamental flaws with this model, including that it (i) may be deployed as a seemingly apolitical strategy for businesses to neutralize criticism from civil society;[78] (ii) is based on vague, deceptive, counter-productive, and inward-looking standards;[79] (iii) amounts to nothing more than 'greenwashing';[80] or (iv) is driven more by CEO narcissism rather than by more legitimate motivations.[81] At a broader level of critique, corporate social responsibility is a fundamentally Western, anthropocentric concept, largely devoid of any reciprocal sense of obligation that companies should have to care for ecological systems.[82] Although some scholars have argued for decades that 'nature' should be considered

their decision making: S.B. Banerjee, 'Corporate Environmentalism: The Construct and its Measurement' (2002) 55(3) *Journal of Business Research*, pp. 177–91.

74 A.B. Carroll, 'Corporate Social Responsibility: Evolution of a Definitional Construct' (1999) 38(3) *Business & Society*, pp. 268–95.

75 A. Crane et al., 'The Corporate Social Responsibility Agenda', in A. Crane, et al. (eds), *The Oxford Handbook of Corporate Social Responsibility* (Oxford University Press, 2008), pp. 1–14.

76 M.J. Epstein et al., *Making Sustainability Work: Best Practices in Managing and Measuring Corporate Social, Environmental, and Economic Impacts*, 2nd edn (Greenleaf, 2018), p. 23 (noting that '[t]he issue of whether companies should consider their sustainability or the impacts of their activities on their stakeholders is … no longer up for discussion. … The challenge has moved from "whether" to "how" to integrate the corporate social, environmental, and economic impacts—corporate sustainability—into day-to-day management decisions').

77 S. Dorobantu et al., 'Introduction: Contemplating the Connections between Sustainability, Stakeholder Governance, and Corporate Social Responsibility', in S. Dorobantu et al. (eds), *Sustainability, Stakeholder Governance, and Corporate Social Responsibility* (Emerald, 2018), pp. 1–14. See also O. Martin-Ortega et al., 'Towards a Business, Human Rights and the Environment Framework' (2022) 14(11) *Sustainability*, p. 6596 (arguing for the formation of an integrated framework in which business activity, human rights, and environmental protection are understood relationally).

78 P. Benson & S. Kirsch, 'Capitalism and the Politics of Resignation' (2010) 51(4) *Current Anthropology*, pp. 459–86.

79 S. de Colle, A. Henriques & S. Sarasvathy, 'The Paradox of Corporate Social Responsibility Standards' (2014) 125(2) *Journal of Business Ethics*, pp. 177–91.

80 L. Gatti, P. Seele & L. Rademacher, 'Grey Zone In – Greenwash Out: A Review of Greenwashing Research and Implications for the Voluntary-Mandatory Transition of CSR' (2019) 4(1) *International Journal of Corporate Social Responsibility*, pp. 1–15.

81 O.V. Petrenko et al., 'Corporate Social Responsibility or CEO Narcissism? CSR Motivations and Organizational Performance' (2016) 37(2) *Strategic Management Journal*, pp. 262–79.

82 P. Shrivastava, 'Industrial/Environmental Crises and Corporate Social Responsibility' (1995) 24(1) *The Journal of Socio-Economics*, pp. 211–27.

a corporate stakeholder,[83] these arguments appear to have fallen out of favour even as an increasing number of jurisdictions recognize the legal personality of ecosystems and beyond-human organisms. In other words, the literature on corporate social responsibility has yet to seriously consider the implications of the expansion of legal personality.

3.3. *Unexplored Questions Raised by the Expansion of Legal Personality*

In the context of the legal frameworks analyzed throughout this section, several critical questions remain unexplored where companies and ecological communities are recognized as legal persons. These include pragmatic queries, such as:

- Do companies owe obligations to ecosystems or beyond-human organisms when they operate in places where legal personality has been expanded?
- Can ecosystems or beyond-human organisms own shares in a private company and, if so, how might their interests be represented on the company's board?
- Would the same director duties apply to a human representative of an ecosystem or beyond-human organism compared with other directors?
- What happens when the private property rights of corporations clash with the rights of ecosystems or beyond-human organisms?
- If an ecosystem or beyond-human organism with legal personality establishes a subsidiary company, what, if any, duties do the directors of that company owe to it?
- How would human representatives who exercise discretion on behalf of an ecosystem or beyond-human organism be held accountable if they make decisions which are not in its best interests but are short-sighted, self-serving, or even fraudulent?

The following section explores these and other questions through a thought experiment, with the aim of addressing the disconnection between the theory and practice of the expansion of legal personality. This thought experiment is not derived wholly from the laws of any one country; however, some legal provisions discussed mirror those developed in Aotearoa New Zealand. The purpose of the thought experiment is to serve as a heuristic framework to reimagine how company law processes and mechanisms engage with the world beyond the human.[84] The following

[83] M. Laine, 'The Nature of Nature as a Stakeholder' (2010) 96(1) *Journal of Business Ethics*, pp. 73–8; N. Haigh & A. Griffiths, 'The Natural Environment as a Primary Stakeholder: The Case of Climate Change' (2009) 18(6) *Business Strategy and the Environment*, pp. 347–59; D. Bazin & J. Ballet, 'Corporate Social Responsibility: The Natural Environment as a Stakeholder?' (2004) 7(1) *International Journal of Sustainable Development*, pp. 59–75.

[84] We decided to develop a thought experiment for this article to allow the reader to 'walk through' the practical implications of the ideas discussed in the article, adopting a 'reasoning by analogy' method common to the study of Western law. We imagined a theoretical culture for the sake of the thought experiment rather than attempt to speak on behalf of real Indigenous peoples and related places, although we acknowledge that the thought experiment in certain respects has been inspired by existing models, especially those of Aotearoa New Zealand. We mean no offence in undertaking the thought experiment. Rather, we hope that it will support the emergence of new legal and practical imaginaries, and we welcome feedback from the reader on the exercise.

discussion recognizes a disparity between our ability to imagine new forms of legal personality and our capacity to understand the practical implications that these imaginaries might have, especially in the domain of company law. Although recent legal experiments that recognize ecosystems and beyond-human beings as persons are noteworthy, it is critical that academics, practitioners, and policymakers from a range of disciplines begin to take seriously the implications that these transformations may entail for corporate practice.

4. RELATIONSHIPS BETWEEN COMPANIES AND ECOLOGICAL COMMUNITIES AS LEGAL PERSONS: A THOUGHT EXPERIMENT

In the country of Terra Cognita, the mountain Monto is a highly significant and sacred figure in the cosmology of the Lokaj Homoj. This Indigenous nation has lived at the base of Monto for many generations. Over the past 200 years, territorialized relationships between Monto and the various tribes that comprise the Lokaj Homoj nation were disrupted by the multiple forms of violence brought on by settler colonialism. In the 18th and 19th centuries, some of the land surrounding the mountain was confiscated by the colonial government and redistributed to non-Indigenous settlers, who established private farms. During the 1960s, riding the wave of the global environmental movement, the Terra Cognita government designated the remainder of Monto as a national park. While this action helped to curb environmental degradation from activities like logging and mining, it also further reduced the ability of Lokaj Homoj to exercise sovereignty over its lands.

After years of mobilizations by Lokaj Homoj communities, the law of Terra Cognita recognized Monto as a legal person. The Monto Personhood Act is ordinary legislation that converts Monto from a national park into a legal entity which owns itself and is responsible for its own management.[85] The Act establishes a Board to operate as the human face of Monto, made up of three members appointed by Lokaj Homoj elders and three members appointed by the Terra Cognita government. This Board is required to fulfil the purposes of the Act, which are (i) to strengthen ancestral ties between Monto and the Lokaj Homoj nation; (ii) to guarantee the long-term sustainability of the ecosystems of which Monto is comprised; (iii) to ensure that Monto is capable of managing itself without dependence upon the Terra Cognita government; and (iv) to provide a place of public recreation and inspiration for the Terra Cognita population as a whole.

While many consider the Monto Personhood Act to be a major legal victory for both Lokaj Homoj self-determination and environmental conservation, before long it becomes evident that the law has not resolved tensions between Monto and the other persons with whom the mountain relates. The withdrawal of national park status also results in a significant drop in government support and revenue to maintain built infrastructure and carry out conservation activities on the mountain, which requires the Board to pursue new avenues for raising revenue. Some ideas that the Board considers

[85] By 'ordinary legislation', we mean that the Act does not have any superior constitutional status.

https://doi.org/10.1017/S2047102523000079 Published online by Cambridge University Press

include establishing subsidiary companies that would focus on various income streams, such as tourism, the sale of replenishable resources, and a clothing line using natural products obtained from Monto lands and waters.

Despite the general acceptance that a commercial venture is needed, the Board members are divided over which business strategy they should pursue to secure ongoing sustainable sources of revenue. The members of the Board who are government appointees want to increase tourism on the mountain by offering guided walks, including to Monto's summit. The Lokaj Homoj Board members oppose this idea, as the summit of Monto is sacred and climbing the mountain constitutes a serious cultural offence.

The Lokaj Homoj Board members offer an alternative proposal, which is to commercialize products such as coats made with the pelts of beavers, which have begun to appear in Monto ecosystems. However, non-Indigenous environmentalists in Terra Cognita are furious when they hear about this idea because beavers are nationally classified as an invasive species. The development of a fur products industry would require the Board to cease current beaver eradication activities, which could threaten the populations of native fish that the environmentalists seek to protect.

Following much debate, the Board decides on a third funding strategy, which is to partner with the forestry industry. The Board approaches Arbo Ltd, a private tree planting and logging company not affiliated with the Lokaj Homoj nation or the Terra Cognita government. The Board and Arbo develop an approach that would involve replanting areas of Monto that had been previously deforested, using a mix of commercial Monterey pine (*Pinus radiata*, an exotic species) and native species. The idea of licensing land to Arbo is possible because one of the provisions of the Monto Personhood Act allows Monto to partially alienate its lands via lease or licence. Thus, the Board, acting on behalf of Monto, grants a 50-year licence to establish a plantation on an area of 1,000 hectares on the eastern flank of the mountain.

At around the time when the first generation of pine trees is ready to be harvested, the Board decides that it would be a good idea to establish a separate business that would create value-added products, including furniture, using the timber that Arbo will harvest. The company that the Board creates, Monto Wood Products Ltd, is incorporated under the Terra Cognita Corporations Act, also ordinary legislation. This Act specifies that, to be registered, a company must have a name, at least one director, at least one share, and at least one shareholder. The Act does not require any kind of object or purpose statement to be included in the company charter, and Monto Wood Products Ltd does not specify one in its application for registration.

The Board initially wants to name Monto itself as the director of Monto Wood Products Ltd, but it is unclear whether the law requires a human person for this role or whether any legal person can serve as director of a company. As an alternative, the Board selects an experienced carpenter with Lokaj Homoj ancestry, Ms Ligno, believing she will ensure that the products produced are of high quality while also working to safeguard the ongoing vitality of Monto ecosystems.

In one of her first actions as director of Monto Wood Products Ltd, Ms Ligno executes a contract for the purchase of 500 tonnes of wood from Arbo Ltd. This

might have been an uncontroversial transaction, except that Ms Ligno requested wood from the native kastano tree that was planted as part of the revegetation initiative, rather than the commercial Monterey pine that Arbo was supposed to harvest. As an expert carpenter, Ms Ligno knows that kastano wood is far superior in quality to pine, so it would give Monto Wood Products Ltd an advantage over competitors and ostensibly earn more profit for shareholders. However, when the Monto Board learns of this decision, its members are incensed and demand that Ms Ligno cancel the contract. When she refuses, the Board sacks her, claiming that she failed to uphold her duties as director of Monto Wood Products Ltd. By way of response, Ms Ligno files a claim against the Board for wrongful termination of employment.

As part of its case the Board argues that Monto Wood Products Ltd is a subsidiary of Monto, and therefore Ms Ligno is required to act in the best interests of Monto, in accordance with the Monto Personhood Act. Ms Ligno counters by claiming that she is only bound to uphold her duties as director of Monto Wood Products Ltd, which was established independently from Monto under the Terra Cognita Corporations Act. Furthermore, Ms Ligno contends that even if she is bound to act in the best interests of Monto, maximizing financial returns is consistent with subclause (3) of the Monto Personhood Act, which aims to ensure that Monto is capable of independent management.

The publicity surrounding the case alerts a group of non-Indigenous Terra Cognita environmentalists to the scale of the forestry operation. The environmentalists file a separate legal claim against the Monto Board for failing to fulfil its duties under the Monto Personhood Act. Their claim invokes subclauses (2) and (4) of the statute. Specifically, the environmentalists argue that harvesting native kastano trees, planted explicitly as part of a revegetation project, will threaten the sustainability of Monto's ecosystems while also detracting from the value of these ecosystems as places for public recreation and inspiration. The environmentalists' lawsuit is made possible because the Monto Personhood Act states that any Terra Cognita citizen may bring a legal action on behalf of Monto where the Board is alleged to have acted in contravention of the duties it owes to Monto.

Because the Monto Personhood Act is the only law in Terra Cognita to recognize the legal subjectivity of a beyond-human person, and because the Act was passed relatively recently, the courts have no precedents on which to base their decisions. Moreover, the claims raised by the two cases are difficult to resolve because of the conflicting duties or responsibilities that the various persons involved in the situation owe to different entities. This conflict is exacerbated by the apparent incommensurability of the Monto Personhood Act and the Corporations Act, given that under the latter legal framework the duty of directors has been narrowly interpreted by both courts and company representatives to require only profit maximization for shareholders.

The controversy further raises questions about the limits of Monto's legal personality. For instance, if the court requires the Monto Board to scale back its forestry operation, it would effectively undermine Monto's right to partially alienate its property through the licence to Arbo Ltd. Without this source of revenue Monto would be effectively orphaned, established as a legal person by the state but left without the funding necessary to ensure the ongoing vitality of the mountain's habitats and

infrastructure. Furthermore, if the court voids the contract for the order of kastano wood, Monto could be liable to Arbo Ltd for breach of contract, given Monto's position as owner of Monto Wood Products Ltd.

While these considerations are important, the various claims raised in this case also require the judges to make decisions that will set important precedents for Terra Cognita jurisprudence. For instance, they must determine whether Monto should be given special treatment in some circumstances, or whether the mountain should be invariably treated as equal to all other human and legal persons under Terra Cognita law. If the latter approach is preferred, the court will be required to balance different interests which may conflict with one another, including the various parties' rights to own property and to freedom of contract, while determining the obligations that these different persons owe to each other.

The Terra Cognita thought experiment explores some of the practical challenges that may arise where legal systems recognize the personality of different kinds of corporate entity and beyond-human organism, and the need to ensure that different forms of legal personality are compatible with one another. The thought experiment also highlights potential opportunities that the expansion of legal personality may present for corporate practice. Where they can work together effectively, different types of legal person, including companies and ecosystems, could achieve synergistic goals, including expanding Indigenous self-determination over ancestral lands, ensuring the conservation and sustainable use of the components of ecosystems according to customary management practices, developing competitive products, and generating financial returns for shareholders. However, the achievement of this kind of synergy may be complicated by a variety of factors, including the limitations of human ability to comprehend the interests of beyond-human persons; political, social, and cultural discrepancies in making value judgments; and the plurality of interests that beyond-human persons themselves may have.

5. REFLECTIONS ON THE POSSIBILITIES FOR A REIMAGINATION OF COMPANY LAW

We have explored in this article practical implications that could arise in jurisdictions that have expanded legal personality such that companies, ecosystems, and beyond-human organisms are all recognized as persons. Our discussion was intended to address a gap in the literature on environmental and company law, while contributing to the ongoing problematization of reforms that were once claimed to represent 'a legal revolution that could save the world'.[86] Throughout the article we highlighted a series of related issues that have not been discussed widely in scholarship on the expansion of legal personality, while outlining some essential questions that should be considered in future research. This is a critical conversation now, as laws that recognize ecosystems and beyond-human organisms as persons continue to be developed and mature

[86] Boyd, n. 1 above.

https://doi.org/10.1017/S2047102523000079 Published online by Cambridge University Press

worldwide, setting the stage for these new legal persons to interact increasingly with corporate entities.

Based on the literature and legal frameworks that this article reviewed and the thought experiment that it developed, we can identify three key ways in which the recognition of ecosystems and beyond-human organisms as legal persons presents challenges and opportunities for company law and corporate practice. Firstly, laws that expand legal personality complicate the continued viability of the shareholder primacy notion of corporate best interests. This challenge will be especially acute in situations where ecosystems or beyond-human organisms that are recognized as legal persons become shareholders or owners of corporate entities. Furthermore, in jurisdictions that have expanded legal personality, it may be advisable to require companies to consider environmental impacts as part of a business purpose requirement for incorporation. Doing so could help companies to avoid the legal liability that could arise where narrow profit-seeking actions result in violations of the rights or interests of ecological communities.

Secondly, the expansion of legal personality introduces novel challenges that the human representatives of both companies (i.e., directors) and ecosystems or beyond-human beings (e.g., statutorily appointed representatives) conceived as persons must consider. These challenges may arise especially where human representatives have a duty to act in the best interests of the legal person they represent. As discussed in earlier parts of the article, what constitutes the best interests of a company or ecological community may be difficult to discern, whether as a result of the lack of a legal requirement for corporate entities to articulate a clear business purpose, or because the interests of ecosystems and beyond-human organisms are moderated through human perception and contingent upon ontologically distinct value systems.

Thirdly, there is considerable uncertainty about the opportunities and synergies that may emerge from interactions between beyond-human beings and corporate entities where both are recognized as legal persons. To date, neither academic scholarship nor legal practice has thoroughly examined the kinds of outcome that could result where a river, a forest, a mountain, or an animal or plant species owns, holds shares in, or serves as director of a company. While this notion may still seem fantastical to many, the Terra Cognita thought experiment suggests that such imaginaries are not only possible but plausible in an increasing number of jurisdictions worldwide. Furthermore, the expansion of legal personality may, in some ways, reflect and reinforce Indigenous epistemologies and ontologies, acknowledging emplaced relationships between human and beyond-human beings and advancing epistemic justice. Where Indigenous self-determination is linked to the recognition that ecological communities, species, or individual beyond-human organisms are persons, and where these persons find new economic opportunities through ownership of or partnership with corporate entities, economic and social inequalities between different human groups may also begin to be levelled.

Through a consideration of the pragmatic implications of the expansion of legal personality, our analysis demonstrates that, despite our general endorsement of the trend towards the recognition of ecosystems and beyond-human organisms as legal persons, much remains to be worked out in practice. Under the legal frameworks

that diverse jurisdictions have enacted to date, assigning legal personality to a particular beyond-human being may be the easy part. Designing systems that ensure that these newly recognized persons can interact effectively and consistently with other legal right-holders, including both companies and human persons, is likely to be much more complicated.

This article was concerned with the reimagination of company law and corporate practice, but there are still many questions related to how, practically speaking, this could be achieved. We believe that legal systems need to move beyond their current anthropocentric and universalist logics when conceiving the responsibilities that corporate entities owe to other kinds of legal person, including ecosystems and beyond-human organisms. To do so, legal pluralism should be promoted[87] towards the embrace of ontological diversity in understandings of how human and beyond-human beings relate.[88] Fostering ontological diversity could mean, for instance, that the best way to act towards a particular ecosystem is not simply for humans to leave it 'untouched' or to try to preserve the place as if it were separate and static, but rather to engage with the environment in ways that have been developed by human communities over time through territorialized relationships, and which give effect to a shared sense of emplacement. The shift towards legal pluralism and place-based ethics of responsibility, reciprocity, and relationality contrasts with earlier emphases on rights, which tended to individualize and reinforce human society's modernist, dualistic separation from nature.

As the Terra Cognita thought experiment suggests, acting in the best interests of an ecosystem or other beyond-human being could entail actions that people living outside a particular ecological community might find to be counterintuitive. For instance, species that were previously deemed invasive could be allowed to thrive because of their usefulness for local human groups, or species considered native could be used in ways that conflict with globalized notions of environmental conservation. Environmental law should be concerned not only with the world beyond the human, but also with reducing the various forms of inequality that stratify human communities and with achieving epistemic justice. Innovative, pluralistic, and ontologically diverse

[87] Legal pluralism is an aspiration that has gained traction in some of the jurisdictions that have already recognized ecosystems and beyond-human beings as legal persons. In Aotearoa New Zealand, for instance, there are ongoing efforts to instantiate a bijural, bicultural, and bilingual legal system, starting with the reimagination of legal education: J. Ruru, 'Legal Education: Educating for a Bijural Aotearoa New Zealand Legal System – the Aspirations of Māori Academics' (2020) *Māori Law Review*, available at: https://maorilawreview-co-nz.eu1.proxy.openathens.net/2020/08/legal-education-educating-for-a-bijural-aotearoa-new-zealand-legal-system-the-aspirations-of-maori-academics.

[88] The recognition of a plurality of worlds could be based, e.g., on the concept of the 'pluriverse', which may be understood as a decolonial political project, the purpose of which is to break modernist bonds of dominance and recognize the existence of a plurality of cosmologies, in which Western universalism is but one; see, e.g., U. Oslender, 'Geographies of the Pluriverse: Decolonial Thinking and Ontological Conflict on Colombia's Pacific Coast' (2019) 109(6) *Annals of the American Association of Geographers*, pp. 1691–705; A. Escobar, *Territories of Difference: Place, Movements, Life, Redes* (Duke University Press, 2008); A. Escobar, *Designs for the Pluriverse: Radical Interdependence, Autonomy, and the Making of Worlds* (Duke University Press, 2017); M. Blaser & M. de la Cadena (eds), *A World of Many Worlds* (Duke University Press, 2018).

https://doi.org/10.1017/S2047102523000079 Published online by Cambridge University Press

strategies for legal reform may resemble other movements that demand the recognition of a 'world of many worlds',[89] in that power may often need to be decentralized and devolved to allow human communities to exercise greater self-determination and autonomy in relation to the lands on which they live.

In the realm of company law and practice, taking the expansion of legal personality seriously may necessitate a re-evaluation of the foundations of corporate personhood. The recognition of corporate entities as legal persons should be understood as a deal that is being struck between the company and the society that lends it legitimacy.[90] This deal should be based on the understanding that, as human constructs, the company and society, like the environments in which they are embedded, are all part of what has been too frequently and reductively described as 'nature'.

[89] Blaser & de la Cadena, ibid.

[90] The extension of legal personality to any non-human entity can be understood as a political bargain that may produce different outcomes at different times, depending on socio-cultural values and priorities; see M. Worthington, 'Legal Personality as Licence' (2022) 31(3) *Griffith Law Review*, pp. 397–417, at 414.

https://doi.org/10.1017/S2047102523000079 Published online by Cambridge University Press