River of Life – A Case Study

Cornelia Tscheppe*

Contents

I. Introduction and Trajectory

A name like "River of Life" brings to mind countless associations with the flow of time and the ever-changing nature of life. However, when it comes to Martuwarra, a

*Cornelia Tscheppe is a research associate at the Department of Constitutional and Administrative Law of the University of Vienna. Contact: cornelia.tscheppe@univie.ac.at. I would like to express my gratitude to the reviewers and the proofreader of this paper as well as to the participants of the 1st Ars Iuris Legal Potentials Conference for their insightful comments and their helpful suggestions.

University of Vienna Law Review, Vol. 7 No 1 (2023), pp. 1-37, https://doi.org/10.25365/vlr-2023-7-1-1.

river in West Kimberley, Western Australia, this name was purposefully chosen by the residential Indigenous population to signify the huge importance the river has for their life as a community. Now, "RiverOfLife" accompanies the river's traditional name "Martuwarra", which the colonial settlers had replaced with "Fitzroy River". This river is most widely known for its rich ecosystem,[1] but has academic achievements under its belt, as well: Martuwarra is one of few rivers worldwide credited with the authorship of research papers.[2]

For years, the Indigenous-led Martuwarra Fitzroy River Council (MFRC) has been pursuing political and legal action to ensure the river's preservation and ecologically responsible management.[3] This council was established by seven communities of Traditional Owners[4] living alongside Martuwarrra following the *Fitzroy River Declaration*.[5] Even though the Declaration is a mere mission statement without binding legal effect within the framework of the Australian legal system, it is considered an important expression of First Law.[6] One of the Declaration's most significant contents pertains the personality of Martuwarra itself: "The Fitzroy River

[1] Anne Poelina and Cristy Clark, 'Sharing First Law and Wake up the Snake' (23 May 2022) <https://vimeo.com/714059501> accessed 22 February 2024. Martuwarra RiverOfLife, Anne Poelina, Donna Bagnall and Michelle Lim, 'Recognizing the Martuwarra's First Law Right to Life as a Living Ancestral Being' (2020) 9 TEL 541 (543).

[2] Martuwarra RiverOfLife, 'Martuwarra Riveroflife' (researchgate.net) <https://www.researchgate.net/profile/Martuwarra-Riveroflife> accessed 22 February 2024.

[3] Martuwarra Fitzroy River Council, 'About Us' (martuwarra.org) <https://www.martuwarra.org/aboutus> accessed 22 February 2024.

[4] "Traditional Owners" is a term used to refer to Indigenous people in relation to the land their ancestors have inhabited for times immemorable, cf, for example, Anne Poelina, Kathrine S. Taylor and Ian Perdrisat, 'Martuwarra Fitzroy River Council: an Indigenous cultural approach to collaborative water governance' (2019) 26 AJEM 236 (237).

[5] Traditional Owners from the Fitzroy River Catchment Area, Fitzroy River Declaration (ecojurisprudence.org) <https://ecojurisprudence.org/wp-content/uploads/2022/07/fitzroy-river-declaration.pdf> accessed 22 February 2024.

[6] Eco Jurisprudence Monitor, 'Fitzroy River Declaration Recognizing Martuwarra-Fitzroy River As A Living Ancestral Being' (ecojurisprudence.org) <https://ecojurisprudence.org/initiatives/fitzroy-river-declaration-recognizing-martuwarra-fitzroy-river-as-a-living-ancestral-being/> accessed 22 February 2024. First Law, in general, refers to "[...] the system of governance and law that Indigenous Australians have developed over tens of thousands of years [...] focus[sing] on maintaining the balance of the earth so that all things can prosper [...]," cf Martuwarra RiverOfLife, Anne Poelina, Jason Alexandra and Nadeem Samnakay, 'A conservation and management plan for the National Heritage listed Fitzroy River Catchment Estate (No. 1)' (University of Notre Dame Australia, 2020) 37. It is defined by "[...] values and ethics of co-management and co-existence [...]" with the river and all living-beings around it, cf RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 37.

University of Vienna Law Review, Vol. 7 No 1 (2023), pp. 1-37, https://doi.org/10.25365/vlr-2023-7-1-1.

is a living ancestral being and has a right to life."[7] This sentence, however short, quite remarkably attempts to reconcile the Indigenous notion of ancestral personhood with a Western, rights-based approach to law. At least at first glance, it narrows down the scope of Indigenous legal thought to the confinements of its Western counterpart. It forms the programmatic basis of the MFRC's endeavours to protect Martuwarra: Even though, as of yet, the river has not received recognition as legal entity under Australian law, to the Indigenous people living alongside it, it definitely is deserving of holding rights, most importantly the right to life.

In this day and age, known as the Anthropocene, we have seen constitutions conferring rights on nature[8] and judgements confirming the legal standing of rivers.[9] Therefore, the Indigenous peoples' bid for Martuwarra's legal personality seems like a logical step to its enhanced protection. This same age, however, has also witnessed on-going ecological destruction of natural entities, despite them holding rights,[10] and the Indigenous communities' progressing deprivation of rights.[11] The Indigenous peoples living alongside Martuwarra are but one example of Indigenous reliance on the concept of the Rights of Nature (RoN). Most notably, they employ the language of a Western rights-based approach to law in order to carve out a space for the unmitigated application of Indigenous legal thought within a (yet to be established) system of legal pluralism. To achieve this goal, the MFRC makes use of a variety of

[7] Declaration, supra note 5.

[8] For example, the Constitution of Ecuador (Art 71, 72), cf Maria Bertel, 'Rechte der Natur in Südamerika – zwischen Biozentrismus und Anthropozentrismus', Stascha Rohmer and Georg Toepfer (eds.), *Anthropozän – Klimawandel – Biodiversität: Transdisziplinäre Perspektiven auf das gewandelte Verhältnis von Mensch und Natur* (Freiburg/München: Verlag Karl Alber, 2021) 191 (201 f).

[9] Regarding India, see, for example, *Mohd Salim v State of Uttarakhand & others*, WPPIL 126/2014 (High Court of Uttarakhand, 5 December 2016) 2017 [19]; decisions of the High Court of Uttarakhand can be accessed via https://hcservices.ecourts.gov.in/ecourtindiaHC/index_highcourt.php?state_cd=15&dist_cd=1&stateNm=Uttarakhand with their case number or party names.

[10] Kenneth Kang, 'On the problem of the justification of river rights' (2019) 44 Water Int 667 (677); Erin O'Donnell, Anne Poelina, Alessandro Pelizzon and Cristy Clark, 'Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature', Anne Poelina (ed.), *Martuwarra First Law Multi-Species Justice Declaration of Interdependence: Wellbeing of Land, Living Waters, and Indigenous Australian People* (University of Notre Dame Australia, 2021) 112 (113). For a slightly more positive perspective, see Guillaume Chapron, Yaffa Epstein and José Vicente López-Bao, 'A rights revolution for nature. Introduction of legal rights for nature could protect natural systems from destruction' (2019) 363 Science 1392 (1393).

[11] See, for example, the conflict surrounding the *Territorio Indígena y Parque Nacional Isiboro Secure* (TIPNIS) in Bolivia affecting both for the worse, cf Maximilian Held, 'Indigene Resistancia: Der Widerstand der bolivianischen TIPNIS-Bewegung' (Bielefeld: transcript Verlag, 2022) 186 ff.

University of Vienna Law Review, Vol. 7 No 1 (2023), pp. 1-37, https://doi.org/10.25365/vlr-2023-7-1-1.

discursive as well as legal strategies that become evident when taking a closer look at their official communications. In analysing them, this paper's main focus will be to examine how the MFRC tries to empower the Indigenous communities of Martuwarra by pursuing legal standing for the benefit of the river. For them, the question of RoN is more than a mere debate about the technicalities of the nature of rights; for them it is an integral part of a debate tackling questions of discrimination and emancipation in past, present and future.

But first, in order to understand the difficulty that RoN might present to nature and Indigenous people alike, their underlying concept has to be critically examined (II.). Such an examination is crucial to understand the limits inherent to RoN. An exclusively negative approach, however, would not do justice to the complex challenges activists and legislators are faced with when striking a balance between the interests of the colonial state, Indigenous rights and the protection of nature. To comprehend the (post-)colonial dynamics at play and viable solutions to overcome them, this paper dedicates a subsection to explain theoretical approaches employed for understanding these dynamics (III.). In the last and central part of this article, the strategies used by the MFRC to achieve legal standing for Martuwarra shall be analysed with regard to how they address the potentially problematic aspects of RoN identified in chapter II. (IV.).

II. The Broader Research Framework

A. Rights of Nature as a White Saviour Narrative?

By virtue of their origin, there are some fallacies to the idea of RoN. These fallacies endanger the empowering effect diligently implemented RoN might have for Indigenous communities. The subsequent analysis will address these fallacies and embed them in a larger context. Firstly, the concept's primary shortcoming is due to the fact that it was initially conceived as a tool to enhance environmental protection with no reference to Indigenous concerns.[12] It was not until the new constitutions in Southern America implemented RoN on Indigenous request that this link was firmly established,[13] even despite the RoN's failure in practice.[14] The question arises whether RoN may be nothing but a pseudo solution. After all, due to their rights-based

[12] Christopher D. Stone, 'Should Trees have legal standing? Law, Morality, and the Environment', 3rd edn (Oxford: Oxford University Press, 2010).

[13] Mihnea Tanasescu, 'Understanding the Rights of Nature: A Critical Introduction' (Bielefeld: transcript Verlag, 2022) 55 f.

[14] Tanasescu, 'Rights of Nature' 66.

University of Vienna Law Review, Vol. 7 No 1 (2023), pp. 1-37, https://doi.org/10.25365/vlr-2023-7-1-1.

approach, RoN do not challenge the legal systems already established. On the contrary, they even help let Western-influenced, post-colonial legal systems appear more open than they actually are. They seemingly incorporate concepts alien to them in consideration of historically marginalised groups that continue to be oppressed. RoN, therefore, seek to remedy the repercussions of imperialism via legal techniques that have done nothing but support European hegemony around the world. This makes the RoN resemble a concept criticised by cultural and literary studies as the narrative of the "white saviour".[15] This term designates a privileged, white person sacrificing her/himself for the redemption of one or more non-white persons.[16] Apart from its potential to obscure the actual inequalities fuelling this kind of narrative,[17] this term is notorious for depicting non-white persons as somewhat dysfunctional, unable to stand up for themselves and to come up with their own strategies to improve their circumstances.[18]

Furthermore, the traditional difference made in Western thought between nature and culture has to be considered. Traditionally, Indigenous people have been associated with the former, Western humans with the latter.[19] This way of thinking links the survival of Indigenous people(s) directly to the preservation of nature.[20] Therefore, in post-colonial states, the discourse surrounding the RoN often addresses environmental and Indigenous concerns as one,[21] trying to consider them both without challenging their Western-influenced legal systems. That is where the allegedly Indigenous-inspired RoN come in, seemingly bridging the division between

[15] Similarly, Makau Mutua has argued that the concept of human rights is defined by a "savages-victims-saviors construction" marginalising non-Western people, cf Makau Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights' (2001) 42 Harv Int Law J 201.

[16] Matthew W. Hughey, 'The White Savior Film and Reviewers' Reception' (2010) 33 Symb Interact 475 (475).

[17] Nicole Maurantonio, '"Reason to Hope?": The White Savior Myth and Progress in "Post-Racial" America' (2017) 94 JMCQ 1130 (1136 ff).

[18] Hughey, (2010) Symb Interact 475 (481).

[19] Tore Andersson Hjulman, 'Rights of the naturised', Lars Elenius, Christina Allard and Camilla Sandström (eds.), *Indigenous Rights in Modern Landscapes: Nordic Conservation Regimes in Global Context* (Oxon: Routledge, 2017) 42 (42).

[20] Russel McDougall, John C. Ryan and Pauline Reynolds, 'Introduction: Postcolonial Literatures of Climate Change', Russel McDougall, John C. Ryan and Pauline Reynolds (eds.), *Postcolonial Literatures of Climate Change* (Leiden: Koninklijke Brill, 2022) 1 (10).

[21] See, for example, the discourse in Bolivia, cf Tanasescu, 'Rights of Nature' 60.

Western rights-based legal systems and Indigenous legal thought.[22] Adopting RoN then becomes the equivalent to the narrative of the white saviour: Western legal thought sees the erroneousness of its anthropocentrism and rights this wrong by acknowledging the legal standing of nature. In doing so, it tries to pay respect to Indigenous philosophy and to apologise for colonialism without questioning its own hegemony or seeking fault with the rights-based approach itself.

Of course, this is a polemical simplification. Just like with everything else, there are nuances.[23] There are indeed implementations of the RoN that only pay lip service to Indigenous concepts and veil the European ideas they derive from;[24] there are, however, also attempts to simultaneously protect nature and empower Indigenous communities by conceiving nature and culture as inseparable entities.[25] Regardless, despite its possible favourable effects, RoN are also to be considered potentially harmful.[26] In spite of this concept's unclear provenance,[27] Indigenous communities around the world have decided to embrace it and use it to their advantage.[28] Therefore, they face the challenge of making the concept of RoN truly their own without perpetuating colonial dynamics, even though Western observers might not see the potential risks thereof as clearly as Indigenous communities themselves. To understand how Western perceptions shape RoN and therefore perpetuate colonial

[22] Chapron, Epstein and López-Bao, (2019) Science 1392 (1392); Yaffa Epstein and Hendrik Schoukens, 'A positivist approach to rights of nature in the European Union' 12 (2021) JHRE 205 (206); Tanasescu, 'Rights of Nature' 42.

[23] Tanasescu, 'Rights of Nature' 16.

[24] See, for example, regarding the use of the Indigenous term *Pachamama* in Andean countries, cf Tanasescu, 'Rights of Nature' 65 f; regarding the use of the concept in the constitution of Ecuador specifically, cf Stefan Knauß, 'Pachamama als Ökosystemintegrität – Die Rechte der Natur in der Verfassung von Ecuador und ihre umweltethische Rechtfertigung' (2020) 7 (2) ZfPP 221 (223 f).

[25] The example of best practice is, still, that of Whanganui River, cf Erin O'Donnell, 'Legal Rights for Rivers: Competition, Collaboration and Water Governance' (Oxon: Routledge, 2019) 161 ff, 194; Chris Prentice, 'River Writing. Culture, Law and Poetics', Russell McDougall, John C. Ryan and Pauline Reynolds (eds.), *Postcolonial Literatures of Climate Change* (Leiden: Koninklijke Brill, 2022) 93 (95 f); Tanasescu, 'Rights of Nature' 74 ff. To regard nature and culture as intersecting elements of preservation was already proposed in a collective volume in 1997, cf Stanley Stevens (ed.), 'Conservation Through Cultural Survival: Indigenous Peoples and Protected Areas' (Washington/Covelo: Island Press, 1997).

[26] Tanasescu, 'Rights of Nature' 15.

[27] Knauß, (2020) ZfPP 221 (230); Tanasescu, 'Rights of Nature' 42.

[28] Cf, for example, the constitutionally enshrined RoN in Bolivia heavily promoted by the president and Indigenous leader Evo Morales, cf Tanasescu, 'Rights of Nature' 60. Similarly, O'Donnell, Poelina, Pelizzon and Clark, 'Stop Burying the Lede', 112 (122).

narratives, it is necessary to elaborate on the RoN's Western narrative[29] and how it relates to the concept of the Anthropocene.

B. The Rights of Nature and the Anthropocene

The notion of nature or natural entities having rights is firmly linked to the idea of the Anthropocene. At first, RoN's objective was to enhance nature's legal protection against harmful human influences.[30] Although this seems to be an exclusively positive aim, RoN directly address the precarious relationship the Anthropocene has with nature itself. Basically, the notion of the Anthropocene implies that the human being is an irresistible force which irrevocably moulds the face of the earth.[31] This perception is shaped by the modern European notion of pitting *nature* and *culture* against each other.[32] Due to the challenges humanity must address as a result of anthropogenic climate change and the (man-made) destruction of nature, this distinction gets increasingly challenged. It is said to be no longer of use in the Anthropocene;[33] likewise, the anthropocentric approach of law has come under scrutiny.[34] The concept of RoN is a way of expressing this shift away from

[29] Tanasescu, 'Rights of Nature' 16 identified the political framework to be more useful for analysing the RoN than the legal framework.

[30] The idea originated with Christopher D. Stone, cf Christopher D. Stone, 'Umwelt vor Gericht: Die Eigenrechte der Natur', 2nd edn (Darmstadt: Wissenschaftliche Buchgesellschaft, 1992) 25 ff. The idea of enhancing nature's protection by giving it legal personality is still a prime motivator for arguing for the concept, cf Bertel, 'Rechte der Natur in Südamerika', 191 (191); Laura Burgers and Jessica den Outer, 'Das Meer klagt an! Der Kampf für die Rechte der Natur' (Stuttgart: S. Hirzel Verlag GmBH, 2023) 16 f; O'Donnell, 'Legal Rights' 158; Kimberly K. Smith, 'Natural Subjects: Nature and Political Community' (2006) 15 Environ Values 343 (344); Tanasescu, 'Rights of Nature' 10.

[31] Eva Raimann, 'Implikationen des Anthropozän. Über die Verortungen des menschlichen Subjektes innerhalb der "Geologie der Menschheit"', Stascha Rohmer and Georg Toepfer (eds.), *Anthropozän – Klimawandel – Biodiversität: Transdisziplinäre Perspektiven auf das gewandelte Verhältnis von Mensch und Natur* (Freiburg/München: Verlag Karl Alber, 2021) 82 (85, 93); Stascha Rohmer, 'Der Mensch und die Rechte der Natur', Stascha Rohmer and Georg Toepfer (eds.), *Anthropozän – Klimawandel – Biodiversität: Transdisziplinäre Perspektiven auf das gewandelte Verhältnis von Mensch und Natur* (Freiburg/München: Verlag Karl Alber, 2021) 212 (221).

[32] Raimann, 'Implikationen', 82 (85).

[33] Jörg Leimbacher, 'Zu einem neuen Naturverhältnis: Die Rechte der Natur', Hans G. Nutzinger (ed.), *Naturschutz – Ethik – Ökonomie: Theoretische Begründungen und praktische Konsequenzen* (Marburg: Metropolis-Verlag, 1996) 73 (88); Prentice, 'River Writing', 93 (93); Raimann, 'Implikationen', 82 (88 f).

[34] Yaffa Epstein and Eva Bernet Kempers, 'Animals and Nature as Rights Holders in the European Union' (2023) MLR 1 (1); Leimbacher, 'Naturverhältnis', 73 (75 f); Rohmer, 'Mensch', 212 (223). *Inter alia*, the concept of the social contract is blamed for only connecting humans but not humans and nature, cf Kirsten Anker, 'To Be Is to Be Entangled: Indigenous Treaty-Making, Relational

anthropocentrism in legal thought. It forms part of a new paradigm[35] declaring nature to be worthy of protection for its own sake and not just as a tool ready for humanity's use.[36] However, some concerns remain that Western legal systems due to their very nature as human constructs may never be able to overcome their anthropocentric bias.[37] Despite this bias, the RoN have been promoted time and time again. Their proponents have brought forth different rationales in order to justify their claim that RoN might be the key to prevent further environmental destruction. Some argue that the exclusion of natural entities from legal standing would only perpetuate the divide between the fluid concepts of *nature* and *culture*.[38] Others think of them as a necessity in the face of failing legal provisions meant to protect nature.[39] Still others think of *nature* in an ecotheological way, perceiving RoN as a way to give nature the respect it deserves.[40]

In Europe, the discourse on RoN usually tackles the question of their compatibility with Western legal systems,[41] highlighting the importance of effective legal enforcement.[42] In post-colonial states, however, they are not only considered a tool for enhanced protection of nature, but also a means to safeguard a specific way of life

Legalities and the Ecological Grounds of Law', Nico Krisch (ed.), *Entangled Legalities beyond the State* (Cambridge: Cambridge University Press, 2022) 59 (72).

[35] Maria Bertel, 'Rechte der Natur in südamerikanischen Verfassungen' (2016) juridikum 451 (453); Burgers and den Outer, 'Meer' 18; Leimbacher, 'Naturverhältnis', 73 (78); Prentice, 'River Writing', 93 (96 f); Rohmer, 'Mensch', 212 (224); Smith, (2006) Environ Values 343 (344); Tanasescu, 'Rights of Nature' 25.

[36] Bertel, 'Rechte der Natur in Südamerika', 191 (192); Chapron, Epstein and López-Bao, (2019) Science 1392 (1392); Julia Dehm, 'Reconfiguring Environmental Governance in the Green Economy: Extraction, Stewardship and Natural Capital', Usha Natarajan and Julia Dehm (eds.), *Locating Nature. Making and Unmaking International Law* (Cambridge: Cambridge University Press, 2022) 70 (71); Leimbacher, 'Naturverhältnis', 73 (79); Smith, (2006) Environ Values 343 (344).

[37] Bertel, 'Rechte der Natur in Südamerika', 191 (197); Smith, (2006) Environ Values 343 (344).

[38] O'Donnell, 'Legal Rights' 158; Raimann, 'Implikationen', 82 (94).

[39] Burgers and den Outer, 'Meer' 16; O'Donnell, 'Legal Rights' 159; Smith, (2006) Environ Values 343 (347).

[40] Tanasescu, 'Rights of Nature' 24 ff.

[41] Epstein and Kempers, (2023) MLR 1.

[42] Leimbacher, 'Naturverhältnis', 73 (82).

in close touch with nature.[43] However, there are some fallacies to this idea, which will subsequently be addressed.

C. The Rights of Nature and their Western Perception

The idea to implement RoN seems like an ideal response to Indigenous and ecological concerns when viewed from a Western perspective, a perspective which is used to thinking about law in terms of rights. Apparently, RoN consider both Indigenous ways of perceiving the world and ensure effective environmental protection. However, we have to ask ourselves why this calculation adds up so nicely.

The key to this question can be found by examining a circumstance mentioned earlier: After centuries of on-going (legal)[44] affirmation, European nations viewing themselves as culturally superior seemingly set themselves apart from colonised groups of people defined by their connection to nature.[45] From a European perspective, the equation of *protection of nature* and *protection of Indigenous ways of living* adds up so perfectly due to the European tendency to "naturise" Indigenous people.[46] Both aims are considered to be two sides of the same coin.

This equation, however, does not hold true: To this day, Indigenous communities all over the world struggle for recognition of their claims to the land they have inhabited since the dawn of time.[47] Surprisingly, in some instances (e.g. Australia), the (spiritual)[48] connection that European colonisers had constructed between Indigenous people and their land did not work to Indigenous people's favour: Settlers consequently considered the then colonised lands as *terrae nullius*, free to be

[43] Knauß, (2020) ZfPP 221 (229); Tanasescu, 'Rights of Nature' 87; remarkably, O'Donnell, Poelina, Pelizzon and Clark, 'Stop Burying the Lede', 112 (113) start the narration of the history of RoN beginning with the constitutions of Ecuador and Bolivia.

[44] Tanasescu, 'Rights of Nature' 43.

[45] Hjulman, 'Rights', 42 (44); Judith Schacherreiter, 'Postcolonial Theory and Comparative Law: On the Methodological and Epistemological Benefits to Comparative Law through Postcolonial Theory' (2016) 49 VRÜ 291 (293).

[46] Hjulman, 'Rights', 42 (45).

[47] For example, in New Zealand new laws were adopted to make sure that native property rights recognised by a court could not take effect, cf Ian Duncanson and Nan Seuffert, 'Mapping Connections: Postcolonial, Feminist and Legal Theory' (2005) 22 AFLJ 1 (10).

[48] Actually, various Indigenous communities do not think of their connection to their surroundings in terms of spirituality but in terms of kinship, cf Martuwarra RiverOfLife, Unamen Shipu Romaine River, Anne Poelina, Sandra Wooltorton, Laurie Guimond and Guy Sioui Durand, 'Hearing, voicing and healing: Rivers as culturally located and connected' (2022) 38 River Res Appl 422 (423).

snatched up by any European passing by.[49] In some instances, Indigenous populations initially managed to be seen as those in charge of the land, only to be subordinated by colonial treaties and the dishonest interpretation thereof.[50] In other cases, Indigenous populations adopted the Western way of attributing ownership.[51] Be that as it may, Indigenous communities usually do not own the land they live off of and therefore do not exert any control over its exploitation.[52]

Even though RoN are implemented in a variety of ways, they promise to preserve the land in question. This obligation to preservation, however, despite being mostly targeted at business corporations,[53] often does not prevent the state from authorising extractive projects. More often than not, these projects have a negative impact on Indigenous communities, who have neither any say in the matter nor have enough leverage to profit off extractive pursuits on their land.[54] The legal implementation of RoN therefore has to both consider this contradiction of interests of national economy, Indigenous communities' economical participation and protection of nature[55] and balance it accordingly.[56] RoN, however, will only ever be a deficient substitute for the level of self-determination property rights could convey to Indigenous communities. As a legal subject, the interests of natural entities holding RoN can be pitted against those of humans,[57] limiting any prospect of real economic control for Indigenous communities over the land they inhabit.

---

[49] Martuwarra RiverOfLife, Magalie McDuffie, Anne Poelina, 'Martuwarra Country: A Historical Perspective (1838-present)' (The University of Notre Dame Australia, 2020) 11.

[50] Tanasescu, 'Rights of Nature' 75 f.

[51] E.g. the case of Hawai'i's Indigenous people as so-to-speak early adopters of Western law, cf Jonathan Goldberg-Hiller, 'Persistence of the Indian: Legal Recognition of Native Hawaiians and the Opportunity of the Other' (2011) 33 NPS 23 (31).

[52] E.g. Ecuador, cf Tanasescu, 'Rights of Nature' 56.

[53] Tanasescu, 'Rights of Nature' 125.

[54] Tanasescu, 'Rights of Nature' 66.

[55] This is a quite delicate problem as time and time again Indigenous communities were – understandably – ready to sacrifice nature for promising economic prospects, cf Pedro Affonso Ivo Franco and Marina Caetano, 'Analysing Decolonial Climate Perspectives: The Case of the Brazilian Legal Amazon' (Stuttgart: Institute for Foreign Cultural Relations, 2023) 37.

[56] Depending on the legal framework, this balance is established with varying degrees of success, cf with regard to Ecuador Tanasescu, 'Rights of Nature' 56.

[57] Chapron, Epstein and López-Bao, (2019) Science 1392 (1393); O'Donnell, Poelina, Pelizzon and Clark, 'Stop Burying the Lede', 112 (118).

Apart from this legal alienation[58] of the country from Indigenous people(s), another sort of alienation starts to happen in the way Indigenous populations are perceived by Western observers. Despite the Indigenous population at times being appreciated by colonial settlers as guardians of nature,[59] Indigenous communities were often removed once the colonialists took charge of a specific natural landscape. Subsequently, they were locked up in designated reservations and regarded as a potential danger to pristine nature.[60] This danger is also inherent to the RoN, especially if guardianship is assigned to an official authority. A development of this kind could easily amount to a definite expropriation of Indigenous land,[61] symbolically cemented by its appropriation by Western legal thought.[62]

Despite these threats of ongoing colonialisation[63] that the RoN pose to Indigenous communities, time and time again these very communities try to prevent their land's and their culture's destruction by working towards a solution involving some sort of legal standing for natural entities. Some of these initiatives were even the most defining to the concept of RoN.[64] However, in order to understand what Indigenous communities try to prevent, Western observers have to take a closer look at the way post-colonial dynamics work and how they may be mitigated.

III. The Broader Theoretical Framework – Decolonial Thought in a Post-Colonial World

When it comes to analysing the dynamics at play in post-colonial states, a Western point of view will always be in danger of perpetuating the very dynamics it seeks to understand and avoid. The way Indigenous people perceive the world may vary widely from the ways of thought ingrained in people brought up within a (solely)

[58] O'Donnell, 'Legal Rights' 158.

[59] Tanasescu, 'Rights of Nature' 88.

[60] Michael Adams, 'Engaging with uncertainty: Shared governance in Indigenous conservation landscapes', Lars Elenius, Christina Allard and Camilla Sandström (eds.), *Indigenous Rights in Modern Landscapes: Nordic Conservation Regimes in Global Context* (Oxon: Routledge, 2017) 126 (127); Hjulman, 'Rights', 42 (42); Tanasescu, 'Rights of Nature' 138.

[61] Tanasescu, 'Rights of Nature' 106.

[62] Prentice, 'River Writing', 93 (98).

[63] Tanasescu, 'Rights of Nature' 10.

[64] O'Donnell, Poelina, Pelizzon and Clark, 'Stop Burying the Lede', 112 (112).

Western framework. Therefore, special theoretical tools[65] are needed to approach problems within a (post-)colonial setting so as to avoid perpetuating colonial ways of thinking and acting. To some extent, these may be provided by sociology and philosophy theorising about the ramifications of the end of colonialism. The two most-commonly employed approaches are those of post-colonialism and decolonial thought. *Post-colonialism*, on the one hand, designates a theoretical approach characterised by its critique of liberal positivism[66] with the objective to understand the ongoing economic and cultural colonisation after colonialism officially ended.[67] *Decolonial thought*, on the other hand, describes a more political[68] grasp of the problem and asks for ways to empower the colonised people by denaturalising and defamiliarizing colonial concepts.[69] There is some rivalry between these two theories;[70] however, examples such as the one at hand show that both approaches have the potential to intersect as well.

To criticise the RoN is also to criticise the rights-based approach of Western legal thought and its repercussions. This becomes especially evident in the – one may even say naïve – implementations of RoN that do not give anyone in particular the right to speak or act for nature or do not consider the broader societal context. An examination of this kind will usually not consider rights as an instrument of Indigenous emancipation but rather as an obstacle thereto. Fundamentally, post-colonial theory is a distinct way of thinking about the respective *other*: Europeans and non-Europeans are ontologically different[71] and therefore not to be governed by the

[65] Already Homi K. Bhabha, 'The Location of Culture' (London/New York: Routledge, 1994) 28 ff emphasised the importance of thoughtfully crafted theory in overcoming colonial dynamics.

[66] Alpana Roy, 'Postcolonial Theory and Law: A Critical Introduction' (2008) 29 Adel Law Rev 315 (319).

[67] Duncanson and Seuffert, (2005) AFLJ 1 (10); Roy, (2008) Adel Law Rev 315 (318); Schacherreiter, (2016) VRÜ 291 (293).

[68] Adrián Groglopo and Julia Suárez-Krabbe, 'Coloniality and decolonisation in the Nordic region: An introduction', Adrián Groglopo and Julia Suárez-Krabbe (eds.), *Coloniality and Decolonisation in the Nordic Region* (Oxon: Routledge, 2023) 1 (7).

[69] Madina Tlostanova, 'Decoloniality. Between a travelling concept and a relational onto-epistemic political stance', Adrián Groglopo and Julia Suárez-Krabbe (eds.), *Coloniality and Decolonisation in the Nordic Region* (Oxon: Routledge, 2023) 145 (148).

[70] Groglopo and Suárez-Krabbe, 'Coloniality', 1 (5).

[71] Pavan Kumar Malreddy, '(An)other Way of Being Human: "indigenous" alternative(s) to postcolonial humanism' (2011) 32 TWQ 1557 (1559).

same means.[72] Further, post-colonial theory is questioning all strictly binary distinctions.[73]

Evidently, this approach shares some residuals of colonialism as well and sometimes even has a colonising influence itself:[74] Thinking of the non-European as the ungovernable by European standards upholds a way of thinking, which Boaventura de Sousa Santos has described as "abyssal". It divides the world into the comprehensible (or the by European means governable) and the incomprehensible (or the ungovernable) and therefore the non-existent.[75] While colonial rulers tackled this incomprehensibility by offering the Indigenous people the chance to reinvent themselves as European subjects renouncing their heritage,[76] post-colonial theory contends itself with the acknowledgement of these differences. Unsurprisingly, this approach is rejected by activists and scholars speaking up against colonialism, for it questions not only the colonial but also the decolonial narrative.[77] In a way, post-colonial theory is not so much about providing solutions to problems emerging in a post-colonial world. Instead, it focuses more on analysing how European discourses shape the perception of the world[78] and humanity's position in it.[79] Post-colonialism may (importantly, yet: solely) provide valuable insights into the question why a rights-based approach to environmental protection may prove harmful to Indigenous communities.

Decolonial thinking, by contrast, is the approach proposed in order to address these shortcomings of post-colonial theory. It not only offers theoretical insights, but also viable solutions for the concerns of the colonised people.[80] The concepts available in post-colonial states are turned on their heads and twisted in ways that redress the

[72] Regarding the Universal Declaration of Human Rights, cf Malreddy, (2011) TWQ 1557 (1560).

[73] Schacherreiter, (2016) VRÜ 291 (294).

[74] Groglopo and Suárez-Krabbe, 'Coloniality', 1 (5).

[75] Boaventura de Sousa Santos, 'Beyond Abyssal Thinking: From Global Lines to Ecologies of Knowledges' (2007) 30 Review (Fernand Braudel Center) 45 (46).

[76] Duncanson and Seuffert, (2005) AFLJ 1 (8).

[77] Roy, (2008) Adel Law Rev 315 (320).

[78] Therefore, post-colonial theory is a powerful tool for the colonised to reclaim their history and agency, cf Roy, (2008) Adel Law Rev 315 (321).

[79] Dipesh Chakrabarty, 'Postcolonial Studies and the Challenge of Climate Change' (2012) 43 NLH 1 (4).

[80] Groglopo and Suárez-Krabbe, 'Coloniality', 1 (7).

University of Vienna Law Review, Vol. 7 No 1 (2023), pp. 1-37, https://doi.org/10.25365/vlr-2023-7-1-1.

harm they have done so far.[81] Of course, this approach is more political in nature, but also more empowering.[82] It is more forward-looking, as it calls for a future which accommodates the needs of both the Indigenous peoples and the settlers' descendants.[83] Its objective is not to eradicate Western conceptions, but to juxtapose them with other narratives facilitating dialogue and joint solutions.[84]

By virtue of their very conception, the RoN are more at home within a decolonial framework. As detailed above, their basic idea in post-colonial contexts – however flawed – is to bring Indigenous perceptions into Western legal systems. They exist in an area of dialogue acknowledging both the reality of Western legal thought and the differing conceptions proposed by Indigenous legal thought.[85] To establish RoN is to attempt a translation of Indigenous ways of thinking into Western legal language.[86] Such a translation, according to Homi K. Bhabha, who builds upon theoretical insights by Frantz Fanon, empowers colonialised peoples to negotiate their own cultural identity and its position in relation to the colonising powers.[87] By its very definition, the associations usually evoked by the use of the term *rights* are rejected and reconceptualised as something inherently different; they are *decolonised*.[88] However, the way that the *Indigenous* in the RoN is conceived is key:[89] It is possible

[81] Bhabha, 'Location of Culture' 33; Tlostanova, 'Decoloniality', 145 (148).

[82] Franco and Caetano, 'Decolonial Climate Perspectives' 18.

[83] Tlostanova, 'Decoloniality', 145 (153). However, sometimes decolonial thought's lack of interest for the future is lamented, cf Tlostanova, 'Decoloniality', 145 (159).

[84] José-Manuel Barreto, 'Book Review: Contextualising Boaventura de Sousa Santos's post-colonial legal theory' (2017) 13 IJLC 558 (559). This objective is not compatible with colonialism and modern European thought, cf in this regard Tlostanova, 'Decoloniality', 145 (149); Tanasescu, 'Rights of Nature' 62. There are, however, nuances and even decolonial thought may be victim to dualist views on the world, cf Tlostanova, 'Decoloniality', 145 (150).

[85] Translations are able to balance "[...] these different normative expectations as well as the different legal systems in which these expectations are embedded [...]", cf Tobias Berger, 'Denial, Deferral and Translation: Dynamics of Entangling and Disentangling State and Non-state Law in Postcolonial Spaces', Nico Krisch (ed.), *Entangled Legalities beyond the State* (Cambridge: Cambridge University Press, 2022) 35 (55).

[86] Tanasescu, 'Rights of Nature' 89.

[87] Bhabha, 'Location of Culture' 55.

[88] This process is what may be achieved by legal "translation": "Instead of simply transferring ideas from one language (or one context) into another, translations constitute proactive innovations of new meanings. This, in turn, challenges the idea of 'the original' as an authoritative reference point to which any translation would need to seek as close a proximity as possible. Instead, proximity in meaning might well arise from a seeming distance to the original [...]", Berger, 'Denial', 35 (42).

[89] Tanasescu, 'Rights of Nature' 42, 134.

that a specific concept of the RoN is trapped in a false understanding of what constitutes either the *Indigenous* or a *rights-based approach*.

Therefore, it is crucial to understand what either side implies[90] when talking about these concepts or RoN in general. It is only then that an understanding which is able to break up established power relations may be reached[91] despite all cultural differences.[92] It is especially important that people used to a Western way of thinking acknowledge that their way of perceiving the world may be biased.[93] In accepting this possibility and critically examining each perception, open dialogue becomes possible, thus paving the way towards mutual understanding. The pursuit of this goal may be supported by both post-colonial theory and decolonial thinking due to the structuralist approach they employ. Both lend themselves to understanding the underlying perceptions that shape concepts in a (post-)colonial setting, helping the Western observer to understand his or her own biases.[94] As a consequence, it can prove beneficial to rely on insights provided both by post-colonial and decolonial research in order to understand the concepts at hand. However, it is also necessary to keep their respective limitations and shortcomings in mind and reflect critically on them. Hence, this paper's two-fold-structure was necessary, in order to first deconstruct the European understanding of RoN and then, secondly, examine the decolonial endeavour pursued to protect Martuwarra.

IV. The Rainbow Snake – Legal Standing for Martuwarra

A. The Case's Context

1. The Circumstances of the Case

As mentioned above, Martuwarra (Fitzroy River) is a vast river system in Northwestern Australia with an unique ecosystem serving as (one of) the last habitats of several endangered species.[95] Since its colonisation up to this day, Martuwarra's

[90] Tlostanova, 'Decoloniality', 145 (148).

[91] Tanasescu, 'Rights of Nature' 140.

[92] Anker, 'To Be', 59 (73); Tanasescu, 'Rights of Nature', 61.

[93] Accordingly, it is of utmost importance to pay attention that we do not project our own understandings onto unfamiliar contexts, cf Thomas Duve, 'Entanglements in Legal History. Introductory Remarks', Thomas Duve (ed.), *Entanglements in Legal History: Conceptual Approaches* (Frankfurt am Main: Max Planck Institute for European Legal History, 2014) 3 (7).

[94] Tanasescu, 'Rights of Nature' 140.

[95] Poelina and Clark, 'Sharing' 9:02; RiverOfLife, Poelina, Bagnall and Lim, (2020) TEL 541 (543).

ecosystem has suffered considerable losses due to a lack of appropriate management.[96] When the regional government started to take serious steps towards damming the river, seven Indigenous communities living around Martuwarra issued the *Fitzroy River Declaration* in 2016. In 2018, the MFRC was founded, dedicating its efforts to achieve the goals lined out in the Declaration.[97] These comprise *inter alia* the development of a management body drawing from traditional governance techniques ingrained in their culture and the communication of the communities' concerns to the local authorities. Regarding legal measures, the Indigenous people wish to strengthen Martuwarra's protection as a heritage site under domestic law and initiate legislation to protect the river "[...] and its unique cultural and natural values."[98]

Since 2018, the competent state government of Western Australia has committed to respect the Declaration[99] and started negotiating a management plan for Martuwarra.[100] However laudable their acknowledgement of Indigenous concerns may be, their propositions leave much to be desired. Firstly, these suggestions reiterate that the aboriginal population may use Martuwarra's water for anything but economic purposes.[101] In doing so, it implicitly dismisses the MFRC's goal to enable the economic prosperity of Indigenous communities by responsible management of the river catchment. Secondly, the government considers establishing an Indigenous advisory board to the competent state authorities in place of exclusively Indigenous self-governance;[102] at the maximum, it is willing to agree to a system of co-management.[103] These co-management bodies, though prevalent in Australia, are notorious for having little effect. Chiefly, they are not fit to tackle inequalities that

[96] RiverOfLife, McDuffie and Poelina, 'Martuwarra Country' 31.

[97] Poelina, Taylor and I. Perdrisat, (2019) AJEM 236 (246).

[98] Declaration, supra note 5.

[99] Poelina, Taylor and I. Perdrisat, (2019) AJEM 236 (246).

[100] Government of Western Australia, 'Managing water in the Fitzroy River Catchment: Discussion paper for stakeholder consultation' (Government of Western Australia, 2020).

[101] See, for example, Government of Western Australia, 'Managing water' 12.

[102] Government of Western Australia, 'Managing water' 5.

[103] Poelina, Taylor and I. Perdrisat, (2019) AJEM 236 (246); Martuwarra RiverOfLife, Alessandro Pelizzon, Anne Poelina, Afshin Akhtar-Khavari, Cristy Clark, Sarah Laborde, Elizabeth Macpherson, Katie O'Bryan, Erin O'Donnell and John Page, 'Yoongoorrookoo: The emergence of ancestral personhood' (2021) 30 Griffith Law Rev 505 (522).

result from the imbalanced economic power resulting from colonialism.[104] Unsurprisingly, thus, the MFRC is not too keen on the proposal.[105] Similarly, the MFRC has been sceptical towards the – now repealed – Western Australian Aboriginal Cultural Heritage Act amended in 2021 for its perpetuation of colonial dynamics.[106]

2. The MFRC's Decolonial Approach – Indigenous Knowledge and Self-Determination

The MFRC and its endeavours regarding the preservation of Martuwarra are a joint project pursued by members of the respective Indigenous communities together. To the Western, especially the scientific public's perception, however, the initiative is spearheaded by Anne Poelina, a professor at the University of Notre Dame[107] and Nyikina woman "[...] who belongs to Martuwarra [...]".[108] Together with likeminded Indigenous and non-Indigenous scholars, she has built an extensive network across Australian universities. This scientific network takes an active part in creating the narratives and rationales used by the MFRC.[109] Obviously, Anne Poelina is outstandingly well placed to pursue an aim of this kind. However, the participation of science also has to be considered in light of the decolonial approach the Indigenous activists have chosen.

Although science and activism are two different things entirely, decolonial thought takes extensive recourse to *Indigenous knowledge* as self-determined Indigenous contributions to discourses affecting them.[110] In this context, Indigenous knowledge serves as a cipher for the more controversial claim to Indigenous self-

[104] Adams, 'Engaging with uncertainty', 126 (135); Martuwarra RiverOfLife, Katherine S. Taylor and Anne Poelina, 'Living Waters, Law First: Nyikina and Mangala water governance in the Kimberley, Western Australia' (2021) 15 AJWR 40 (51).

[105] Poelina, Taylor and I. Perdrisat, (2019) AJEM 236 (246).

[106] Martuwarra RiverOfLife, Anne Poelina, Magali McDuffie and Marlikka Perdrisat, 'Martuwarra Fitzroy River Watershed: One society, one river law' (2023) PLOS Water 1 (12 f).

[107] The University of Notre Dame, 'Professor Anne Poelina' (notredame.edu.au) <https://www.notredame.edu.au/research/nulungu/staff/Anne-Poelina> accessed 22 February 2024.

[108] RiverOfLife, Poelina, McDuffie and M. Perdrisat, (2023) PLOS Water 1 (2); Poelina and Clark, 'Sharing' 1:58.

[109] RiverOfLife, McDuffie, Poelina, 'Martuwarra Country' 10. See also RiverOfLife, Poelina, Bagnall and Lim, (2020) TEL 541 (544).

[110] Linda Tuhiwai Smith, 'Decolonizing Methodologies: Research and Indigenous Peoples', 3rd edn (London et al.: Bloomsbury Academic, 2022) 182.

determination.[111] In the case of Martuwarra, the reference to Indigenous knowledge or Indigenous science[112] seems to be even more appropriate as the MFRC's objectives are not framed in terms of sovereignty[113] but in those of preservation and sustainable development.[114] It becomes clear that it is the future that is at stake here rather than justice for colonial crimes suffered. The focus of the MFRC's efforts lies nearly exclusively on the future and the possibilities that traditional Indigenous knowledge may bring to the table to secure the region's sustainable development.[115] The activists ensure that Indigenous knowledge holders control the communication of their traditional knowledge, while also giving Western scientists the opportunity to prove its validity by Western scientific standards.[116] For the MFRC, this self-determined and self-empowering effort of translation in pursuit of mutual understanding is tantamount. Thus, they are able to prove the benefits of Indigenous knowledge and to utilise them when conceiving of strategies that tackle climate change.[117]

Proposing solutions is one thing. Yet, it is an entirely different thing to convince the public and (mostly white)[118] people in charge to follow through with the developed solutions. In order to attain public consent, the Council directly addresses central narratives of the Anthropocene and climate change, twists them and turns them upside down. Thus, it effectively questions the (deficient) means Western law offers Indigenous people for protecting their interests.

---

[111] Smith, 'Decolonizing Methodologies' 277.

[112] Poelina and Clark, 'Sharing' 12:10.

[113] On the contrary, the discourse in New Zealand has been about sovereignty and joined use for more than a century, cf the account in Kerry Howe, 'Postcolonial Redemption in New Zealand: Treaty and Tribunal in Context' (2003) 22 WYAJ 99.

[114] RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 25.

[115] RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 26.

[116] RiverOfLife, Taylor and Poelina, (2021) AJWR 40 (47); RiverOfLife, Poelina, McDuffie and M. Perdrisat, (2023) PLOS Water 1 (11).

[117] RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 25, 27, 40, 57.

[118] The government officials entrusted with the negotiations of the management plan are four white politicians, cf Government of Western Australia, 'Managing water' 1. The then Minister for Aboriginal Affairs had some Indigenous heritage through his father, cf Paul Cleary, 'Meet Ben Wyatt, one of the most accomplished MPs you've never heard of' (The Australian, 9 March 2013) <https://web.archive.org/web/20130317200239/http://www.theaustralian.com.au/national-affairs/elections/meet-ben-wyatt-one-of-the-most-accomplished-mps-youve-never-heard-of/story-fnhk4aej-1226593459242> accessed 22 February 2024.

University of Vienna Law Review, Vol. 7 No 1 (2023), pp. 1-37, https://doi.org/10.25365/vlr-2023-7-1-1.

B. The Methodological Approach

In the following two sections of this paper, these strategies shall be explored drawing from sources provided by the MFRC as official communications. The MFRC itself regularly publishes reports[119] and strategy papers as propositions for the protection of Martuwarra.[120] Additionally, it has produced an award-winning[121] documentary web series,[122] a (partly) animated short film about fracking and its impact on the environment[123] and another animated film relating the traditional story of Yoongoorrookoo.[124] All of them were considered in this analysis. As it turned out, however, the two animated films could only illustrate individual points with regards to the research question at hand.

As detailed above, the MFRC also pursues an academic approach to advocacy for Martuwarra, resulting in a steadily growing number of publications attributed to Martuwarra as first author. The texts analysed were chosen either due to their political nature, due to their direct examination of the concept of RoN and/or due to their explicit aim to establish the concept of water as a cultural medium. As a rule, all publications attributed to exclusively human authors were considered secondary sources with regard to the analysis. Even though some of these authors are also involved in the MFRC's political actions, their work was not analysed as an official communication of the MFRC.[125] A slight exception was made with regards to an

[119] E.g. Martuwarra Fitzroy River Council, '2022 Annual Review' (martuwarra.org, 2023) <https://assets.nationbuilder.com/martuwarra/pages/1/attachments/original/1679205598/_MFRC_Annual_Report_2022.pdf?1679205598> accessed 22 February 2024.

[120] E.g. RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan'.

[121] Voices of the River, 'Awards' (voicesoftheriver.org) <https://www.voicesoftheriver.org/awards> accessed 22 February 2024.

[122] For the sake of clarity, this text references an official version of this web series that has published all episodes as one documentary, cf Anne Poelina and Martuwarra RiverOfLife, 'Voices for the Martuwarra' (2020) <https://zenodo.org/records/3831837> accessed 22 February 2024.

[123] Madjulla Inc., 'Dangaba: The Story of Frecking' (2014) <https://vimeo.com/710662076> accessed 22 February 2024.

[124] Martuwarra RiverOfLife, Anne Poelina, Mark Coles Smith, Mark Jones, Magali McDuffie, Alex Shaw and Kazumi Daido, 'Yoongoorrookoo Creator of the Law' (2021) <https://zenodo.org/records/4568616> accessed 22 February 2024.

[125] Of course, this approach is nothing but an attempt to choose from a wide variety of potential sources in order to adhere to the maximum length of this paper. It has to be kept in mind that a broader analysis might consider publications of authors affiliated with the MFRC and also engage with the evolution of Martuwarra's co-authorship (as referenced in RiverOfLife, Pelizzon, Poelina, Akhtar-Khavari, Clark, Laborde, Macpherson, O'Bryan, O'Donnell and Page, (2021) Griffith Law Rev 505

interview with Anne Poelina conducted and published by Cristy Clark.[126] The recorded video in question centred not only the professor's academic work but also explanations concerning the MFRC's strategy, making it an unavoidable source.

Methodologically, a qualitative contextual analysis[127] was conducted. Drawing from the theoretical concerns regarding the RoN that were explained in II., several areas of concern were identified: These are the anthropocentrism of law, the Western narrative of a close relationship between nature and Indigenous people, the lingering lack of Indigenous control over their land and therefore Indigenous people's lack of self-determination. Additionally, the analysis considered the MFRC's way of addressing climate change as a separate analytical category in order to give the idea of protecting the environment by RoN its due.

In order to assess the question of how the MFRC addresses these issues and which solutions it proposes, its strategies were then classified within these problem areas. Connections were established between these strategies as to where they interlock. Generally speaking, a distinct line of argument emerged which tackled the question of the position of Indigenous people within Western legal systems and how RoN might provide relief to them. However, another strand heavily focused on the relationship between Indigenous communities and climate change, prompting the two-fold structure of the following analysis.

C. Martuwarra and the Anthropocene

1. Martuwarra and Its People – Understanding Indigenous Ontology

As this paper has examined in subsection II., a key explanation as for why natural entities such as rivers are deserving of legal standing is usually sought in Indigenous world views. Martuwarra is no exception to this rule, as the MFRC regularly stresses the Indigenous peoples' different perception of the river and its catchment. Indigenous people who are prompted to talk about their connection to the country[128]

[507]). Within the constraints of this article, however, it was necessary to choose the clear-cut, though imperfect approach of only considering publications attributed to Martuwarra itself.

[126] Poelina and Clark, 'Sharing' 1:58.

[127] For the potentials of this methodological approach, consult Maria Paola Faggiano, 'Content Analysis in Social Research: Study Contexts, Avenues of Research, and Data Communication Strategies' (Leiden/Boston: Koninklijke Brill, 2023) 32 ff.

[128] "Country" (sometimes without an article) is the term used by Indigenous people to describe the land they live on by employing terms of kinship, cf RiverOfLife, Unamen Shipu Romaine River, Poelina, Wooltorton, Guimond and Durand, (2022) River Res Appl 422 (423).

describe an experience of interdependence and interconnectedness.[129] In their view of the world, every living being is able to cause repercussions for every other living being connected to it.[130] Martuwarra and its waters are perceived as living beings as well, dominating all relations in the catchment area.[131] This supreme importance of the river is shown in the way the aboriginal people link their very existence to it: "No river, no people. No people, no life."[132] "If River dies, people will die."[133]

Spiritually, the river is referred to as ancestral living being. Martuwarra's stories of origin relate a tale about the spearing of the Rainbow Serpent (Yoongoorrookoo) by Woonyoombo (the first Nyikina man).[134] Until today, the river ensures the connection between the Indigenous people and their ancestors as well as the mythological being, the Rainbow Serpent, that became Martuwarra.[135] All laws, traditions, customs as well as society itself go back to these ancestral beings.[136]

Martuwarra therefore seems to be a typical example of a natural entity worthy of legal standing because of the way the Indigenous people ascribe personality to it. However, nothing is as it appears at first glance. The ancestral personhood afforded to the river is not to be confused with judicial personhood.[137] This may be illustrated by a reaction Anne Poelina witnessed when explaining the concept of rights for Martuwarra to an Elder. He thought the whole idea utterly ridiculous as the river is clearly not a human being.[138] This not only goes to show that Western legal thought's anthropocentrism is

[129] Poelina and RiverOfLife, 'Voices' 1:24, 6:22, 6:57, 10:51, 13:05, 14:47; RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 37; RiverOfLife, Taylor and Poelina, (2021) AJWR 40 (43).

[130] Poelina and Clark, 'Sharing' 27:46.

[131] Poelina and RiverOfLife, 'Voices' 6:57; RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 38.

[132] Poelina and RiverOfLife, 'Voices' 6:22.

[133] Poelina and RiverOfLife, 'Voices' 10:51

[134] Poelina, Taylor and I. Perdrisat, (2019) AJEM 236 (239). Woonyoomboo is also considered the human face of the river, making him and Yoongoorrookoo two sides of the same coin, cf O'Donnell, Poelina, Pelizzon and Clark, 'Stop Burying the Lede', 112 (133).

[135] RiverOfLife, Unamen Shipu Romaine River, Poelina, Wooltorton, Guimond and Durand, (2022) River Res Appl 422 (425).

[136] Poelina and Clark, 'Sharing' 1:58, 8:46; RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 23; RiverOfLife, Poelina, Bagnall and Lim, (2020) TEL 541 (544).

[137] Poelina and Clark, 'Sharing' 16:22.

[138] Poelina and Clark, 'Sharing' 17:10. In another instance, Poelina also referred to a certain unease befalling the Indigenous people of Martuwarra when thinking of Martuwarra as a legal person subject

well understood by Indigenous communities. It also serves as proof for Mihnea Tanasescu's claim that legal standing is not a necessity in Indigenous legal thought.[139] Consequently, the demand to convey legal standing upon Martuwarra ultimately has to be understood as a strategy for translating the river's significance for the benefit of the oblivious Western observer.[140] By conferring legal personality upon Martuwarra, the MFRC tries to bring the settler society to the realisation that, to the Indigenous communities, the river is a living ancestral being worthy of preservation and consideration.[141]

Be it as it may, the Indigenous community clearly worries about their world view not being taken seriously by the government, which is dominated by the settler society's needs. Worse, they feel as if their Western counterparts think of Indigenous ways of perceiving the world as "[...] lie[s]" just because they themselves see the world from a different perspective.[142] Therefore, emphasis on these ontological differences dominates the MFRC's official communications.[143] The Indigenous understanding of the *living waters* that constitute the river is, for example, especially important to its pursuits. What is seen by the settler society as a precious resource, to the local Indigenous communities "[...] link[s] material and spiritual connections [...]."[144] This does not only explain the interconnectedness of all living beings in the river catchment but also the way the aboriginal community perceives the relationship between the river, their culture, law, and language.[145]

Quite literally and figuratively, the people of Martuwarra derive their cultural identity from the river. They understand that the river has to be mentally, socially and emotionally healthy.[146] Only then can it provide all living beings along its banks,

---

to Western legal thought, cf O'Donnell, Poelina, Pelizzon and Clark, 'Stop Burying the Lede', 112 (136).

[139] Tanasescu, 'Rights of Nature' 42.

[140] RiverOfLife, Pelizzon, Poelina, Akhtar-Khavari, Clark, Laborde, Macpherson, O'Bryan, O'Donnell and Page, (2021) Griffith Law Rev 505 (518) refers to this translation as "[...] bridge [...]".

[141] Poelina and RiverOfLife, 'Voices' 6:03.

[142] RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 51.

[143] See, for example, the relatively lengthy explanation of First Law in the Management Plan, RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 37 f; RiverOfLife, Poelina, Bagnall and Lim, (2020) TEL 541 (545 f).

[144] RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 22.

[145] RiverOfLife, Taylor and Poelina, (2021) AJWR 40 (40).

[146] Poelina and RiverOfLife, 'Voices' 18:35; see as well Poelina, Taylor and I. Perdrisat, (2019) AJEM 236 (243).

humans included, with sufficient livelihoods. Culture and nature exist not apart from each other but are indissolubly intertwined.[147] The MFRC insists on the fact that Indigenous knowledge and worldview share the same ontological premisses,[148] resulting in legal and cultural knowledge that provides everything needed to preserve Martuwarra in its entirety.[149]

Furthermore, the MFRC opposes Western ways of governance which treat Indigenous people the same way as their Western fellow citizens. Deriving from their different view on the world, the people of Martuwarra do not communicate in written text but in visual mediums – even when it comes to abstract ideas.[150] The Council considers this in the way it communicates important information. This ensures that Indigenous communities are able to give their informed consent or refusal for projects under consideration.[151] Any serious solution to the governance problems at hand will have to address the underlying issue of the way information is delivered to Indigenous people, regardless of whether or not Martuwarra will eventually achieve legal personality. This is especially the case, as disregard for the matter will only result in forcing Western ways of thinking upon these Indigenous communities.[152]

2. Legal Pluralism – A Legal Solution?

Quite remarkably, the solution proposed by the MFRC does not stop with the recognition of the importance of Martuwarra by conferring legal personality upon it. Rather, the Council's concept provides for economic as well as governing action. Additionally – and most importantly, at least for a legal analysis – it includes a proposition for a system of legal pluralism to be established in Kimberley.[153]

---

[147] RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 29.

[148] RiverOfLife, Poelina, Bagnall and Lim, (2020) TEL 541 (545 ff); RiverOfLife, Taylor and Poelina, (2021) AJWR 40 (44).

[149] RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 23.

[150] See, for example, the approaches employed in order to hold a workshop aimed at developing governance strategies drawing from Indigenous knowledge, cf Rosemary Hill, Pia Harkness, Nat Raisbeck-Brown et al., 'Learning together for and with the Martuwarra Fitzroy River' (2022) 17 Sustai Sci 351.

[151] See, for example, the short film on frecking, cf Madjulla Inc., 'Dangaba'.

[152] The method of *story-telling* is also seen as a way for Indigenous communities to reclaim their agency, cf RiverOfLife, Poelina, McDuffie and M. Perdrisat, (2023) PLOS Water 1 (3). For an example, cf RiverOfLife, Poelina, Coles Smith, Jones, McDuffie, Shaw and Daido, *Yoongoorrookoo*.

[153] RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 28, 44; RiverOfLife, Poelina, McDuffie and M. Perdrisat, (2023) PLOS Water 1 (5).

At the moment, the law of the federal state of Western Australia does not recognise Indigenous law as legally significant: State legislation provides for frameworks preserving natural and cultural heritage.[154] Indigenous law, however, is not considered to be a source of law.[155] To the Indigenous people of Martuwarra, however, the laws and codes of conduct provided by First Law are the only guiding principles for the responsible management of Martuwarra. They already contain every guideline needed to preserve the river, its ecosystem and the Indigenous society.[156] At the core of its endeavours, this is what will make or break the MFRC's case: Legal standing for Martuwarra shall serve as a transmitter for First Law into the legal system of Western Australia. As described above, Martuwarra, from an Indigenous perspective, is much more than the mere river that Western people perceive. To the aboriginal people, Martuwarra is not only the source of life, but of society itself. It is impossible to separate one from the other.[157] Thus, to recognise the legal standing of Martuwarra would also amount to a recognition of First Law.

At this point, however, the water becomes muddy and the lines between political action and legal assessment are blurred. Even though the MFRC frames its claims as political objectives rather than the interpretation of already existing legal remedies, it pursues a double strategy. On the one hand, it aims at a political solution which includes the recognition of legal standing for Martuwarra. On the other hand, it puts forth the claim that there is already the legal obligation to look at Martuwarra as an integrated ecological and cultural system that is governed by the universally binding principles of First Law. This claim is backed up by the existence of so-called *native titles* to the land of the river catchment.[158]

---

[154] RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 61 f. The MFRC has sought remedy within the framework of the legal protection of cultural heritage. Though it exceeds the scope of this paper by far, it shall be pointed out that heritage conservation may, as well, prove harmful to Indigenous communities, cf Adams, 'Engaging with uncertainty', 126 (127).

[155] Indigenous law in Australia is acknowledged only in tight confinements, cf Roy, (2008) Adel Law Rev 315 (354).

[156] RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 37; RiverOfLife, Poelina, Bagnall and Lim, (2020) TEL 541 (547); RiverOfLife, Poelina, McDuffie and M. Perdrisat, (2023) PLOS Water 1 (8); see as well Poelina, Taylor and I. Perdrisat, (2019) AJEM 236 (240).

[157] RiverOfLife, Unamen Shipu Romaine River, Poelina, Wooltorton, Guimond and Durand, (2022) River Res Appl 422 (427).

[158] RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 17, 54; RiverOfLife, Poelina, McDuffie and M. Perdrisat, (2023) PLOS Water 1 (8); see as well, O'Donnell, Poelina, Pelizzon and Clark, 'Stop Burying the Lede', 112 (135).

The roots of these native titles go all the way back to the annexation of Australia under the pretence that the continent was *terra nullius*, land belonging to no one, notwithstanding the Indigenous communities living all over it. The British Crown therefore never acknowledged any form of Indigenous property rights to or sovereignty over the land.[159] In 1992, a court ruling ultimately dismissed this ahistorical conception. The then newly-conceived concept of native titles granted Indigenous communities the right to use their traditional lands in traditional ways.[160]

Martuwarra's peoples hold native titles to the river catchment.[161] Although Indigenous communities have come to recognise native titles as an opportunity,[162] these titles have turned out to be less impactful than it was hoped for in 1992. Generally, native titles have to stay within the boarders defined by colonial law.[163] Along Martuwarra, these confinements are manifested directly with regards to the use of water[164] by the Indigenous communities. The Indigenous population may only take as much water as needed in order to live, perform rituals and pursue traditional forms of agriculture and commercial life.[165] With regard to any other purpose, they have to satisfy the same requirements any settler would need to fulfil in order to use Martuwarra's water.[166] This solution may hardly be considered appropriate with regard to the

[159] RiverOfLife, McDuffie, Poelina, 'Martuwarra Country' 11.

[160] *Mabo v Queensland [No 2] ("Mabo case")* [1992] HCA 23; (1992) 175 CLR 1 (3 June 1992); decisions of the High Court of Australia can be accessed via https://eresources.hcourt.gov.au/ with their party name.

[161] RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 54; see as well, O'Donnell, Poelina, Pelizzon and Clark, 'Stop Burying the Lede', p. 134.

[162] Glen Kelly and Stuart Bradfield, 'Winning Native Title, or Winning out of Native Title?' (2012) 8 (2) ILB 14 (14).

[163] Annika Reynolds, 'A coloniser's view: On healing and native title reform' (2022) 47 Altern Law J 291 (293). Also, they are (too) easily extinguished, cf Roy, (2008) Adel Law Rev 315 (326). Anne Poelina stated that native titles conquer Indigenous populations once more, cf Poelina and Clark, 'Sharing' 26:05.

[164] Although the issue cannot be further addressed here, it has to be noted that the way Australian law allocates the use of water itself has colonising dynamics, cf RiverOfLife, Taylor and Poelina, (2021) AJWR 40 (41, 44); see as well Poelina, Taylor and I. Perdrisat, (2019) AJEM 236 (239).

[165] Government of Western Australia, 'Managing water' 18; RiverOfLife, Taylor and Poelina, (2021) AJWR 40 (48); see as well Poelina, Taylor and I. Perdrisat, (2019) AJEM 236 (242).

[166] Government of Western Australia, 'Managing water' 18.

MFRC's aspirations to enable the Indigenous communities to procure the sustainable amelioration of their economic situation.[167]

Furthermore, this interpretation of native titles, though enshrined in the legal framework surrounding them,[168] does not seem to be in line with the prevailing opinion in legal scholarship. Native titles in the Commonwealth must not be identified with Western standards of property rights. They are to be understood within the framework provided by the respective cultural context.[169] This is where the MFRC's rationale kicks in, claiming that First Law may not be dissolved from the country itself. It forms part and parcel of the land, becoming an aspect of the legal title provided for by colonial law. Therefore, the relationship between the respective Indigenous community and the land is already subject to First Law. Indigenous people are obligated to fulfil their responsibilities of care toward the land alongside Martuwarra. However, they are also entitled to take this responsibility for the entire landscape.[170]

Assuming that there is some legal valour to the argument,[171] this stance may prove truly revolutionary with regard to the MFRC's negotiating power. While there is some room for doubt that the government would recognise this claim,[172] it may pave the way towards reaching satisfactory consent. In this context, legal standing for Martuwarra – if executed accordingly – could serve as a replacement for any attempts to a claim founded on native titles.[173] Provided that legal standing for Martuwarra

[167] RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 27; Poelina, Taylor and I. Perdrisat, (2019) AJEM 236 (246); see also Anne Poelina and Johan Nordensvärd, 'Sustainable Luxury Tourism: Indigenous Communities and Governance', Anne Poelina (ed.), *Martuwarra First Law Multi-Species Justice Declaration of Interdependence: Wellbeing of Land, Living Waters, and Indigenous Australian People* (University of Notre Dame Australia, 2021) 92 (100).

[168] RiverOfLife, Pelizzon, Poelina, Akhtar-Khavari, Clark, Laborde, Macpherson, O'Bryan, O'Donnell and Page, (2021) Griffith Law Rev 505 (519).

[169] Reynolds, (2022) Altern Law J 291 (293).

[170] RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 17, 54; RiverOfLife, Pelizzon, Poelina, Akhtar-Khavari, Clark, Laborde, Macpherson, O'Bryan, O'Donnell and Page, (2021) Griffith Law Rev 505 (520); RiverOfLife, Taylor and Poelina, (2021) AJWR 40 (43); see also Poelina and Nordensvärd, 'Sustainable Luxury Tourism', 92 (101).

[171] For a generally positive outlook on the question, cf Reynolds, (2022) Altern Law J 291.

[172] The government has already stated that they do not intend to cede property rights to the catchment, cf Government of Western Australia, 'Managing water' 18.

[173] Similarly, Reynolds, (2022) Altern Law J 291 (294) argues in favour of implementing RoN as a reform of native title law in order to not "[...] immediately unravel[...] Australia's entire property system."

would comprise the entirety of what the Indigenous communities understand when referring to the river, such a solution would allow Indigenous peoples to effectively exert their responsibility over the river. They could possibly establish a form of cultural governance and decide on their own on the economic activities pursued in the catchment. Such a solution would allow for Martuwarra's preservation according to First Law while also pursuing sustainable economic development.[174] However, the Indigenous people's right to govern according to First Law would have to be explicitly recognised;[175] otherwise, it would become an elusive accessory to Martuwarra's legal standing open for legal contestation, fuelled by a different ontological understanding of what Martuwarra is.

Thus, the implementation of cultural governance together with legal standing for Martuwarra would need to establish a delicate balance between Indigenous claims to self-determination and the legal order in place. However, the question remains, whether it would even be appropriate to acknowledge Indigenous cultural governance in this form. The concern remains that Indigenous legal thought may suffer when implemented in a Western system.[176] Notwithstanding these concerns, legal pluralism presents itself as viable solution to the problems Martuwarra is facing. At least, nothing seems to indicate that a First Law approach would not prove more beneficial to the river catchment then the current framework which enables extractivism.

Furthermore, this concept manages to turn legal colonialism upside down. Instead of the assumption that the law follows the empire, the people of Martuwarra propose a concept in which the law derives from the land.[177] This may provide for a truly integrated legal community, because everyone, regardless of skin colour or descent, is subject to the same law by virtue of a shared attribute: their place of residence.[178] Such an approach may prove useful for establishing a plurality of legalities, which does not exclude non-Western perceptions of law, making the legal world of Western Australia more open to all humans.

---

[174] RiverOfLife, Taylor and Poelina, (2021) AJWR 40 (41).

[175] RiverOfLife, Poelina, McDuffie and M. Perdrisat, (2023) PLOS Water 1 (11).

[176] Roy, (2008) Adel Law Rev 315 (352).

[177] RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 10; RiverOfLife, Taylor and Poelina, (2021) AJWR 40 (42).

[178] RiverOfLife, Poelina, McDuffie and M. Perdrisat, (2023) PLOS Water 1 (8).

D. Martuwarra and Climate Change – A Bottom-Up-Approach for Climate Governance

This proposal for legal pluralism centring around First Law is not the only instance of the MFRC's referral to the concept. A variant of this approach can also be found regarding the question of what Martuwarra and its people may contribute in terms of addressing climate change. True to its close relationship with science, the MFRC acknowledges the reality of anthropogenic climate change.[179] Although the MFRC recognises humanity's behaviour as its reason, it also places responsibility on the Western way of capitalist economies.[180] In doing so, the MFRC opens up the discourse in favour of everyone exploited by the current global economic system.[181]

Thereby, Martuwarra's cause becomes not only an Indigenous concern but a concept serving everyone[182] apart from the few people profiting off the dynamics that made climate change possible. The MFRC also considers the position of the white settlers employed in the extractive economy in the river catchment. As the economic course pursued by the Indigenous communities would put these – mostly – blue-collar workers out of work, the MFRC takes responsibility for their future perspectives.[183] It is convinced that its endeavours for decolonising the current system of management in the river catchment will ultimately better the circumstances of Indigenous and non-Indigenous inhabitants alike.[184]

Remarkably, the MFRC goes even further. The people of Martuwarra believe that all rivers across the globe are interconnected.[185] In this sense, not only the people living around and with Martuwarra are connected by the river;[186] so is also the entirety of humanity, which is connected through the entirety of rivers around the world. This unity imposes responsibility on everyone for each other and nature.[187] Even though

---

[179] Poelina and Clark, 'Sharing' 24:43.

[180] RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 17.

[181] This phenomenon, however, is not exclusive to Martuwarra and the MFRC but a strategy often employed in discourses of resistance, cf McDougall, Ryan and Reynolds, 'Introduction', 1 (29).

[182] RiverOfLife, Poelina, McDuffie and M. Perdrisat, (2023) PLOS Water 1 (2).

[183] Poelina and Clark, 'Sharing' 7:11.

[184] Poelina and Clark, 'Sharing' 32:43; RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 17, 60.

[185] Poelina and Clark, 'Sharing' 12:51; Poelina and RiverOfLife, 'Voices' 13:05.

[186] RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 17.

[187] Poelina and RiverOfLife, 'Voices' 13:10; RiverOfLife, Poelina, McDuffie and M. Perdrisat, (2023) PLOS Water 1 (2). To the Indigenous people of Martuwarra, Indigenous participation in discourses

this narrative does not deny responsibility for harm already done, it provides a more positive – and maybe even more productive – outlook on the challenges of climate change, as it does not take part in the blame game.

However, this does not only mean that humankind shares responsibility for further action. Humanity has to ensure that everyone can take an active part in this shared responsibility. Here, MFRC's demand for legal pluralism comes full circle as it questions the effectiveness of modern, Western-style democracy. From its point of view, it is not democracy *per se* that is damaged, but the government at the intersection of party politics and specialised departments shifting responsibility back and forth that is the problem.[188] The Indigenous communities living with Martuwarra question whether it is truly the people who are in charge or rather economic interests.[189] Further, they highlight the importance of dialogue between different ontological perspectives facilitated by *bridges* that reframe notoriously contested questions.[190]

However, it becomes clear that MFRC does not question the value of democracy *per se*, but rather the Western actors dominating it; this is especially evident in the synopsis with the Council's critique regarding extractive capitalism. Though the Council does not propose an elaborated alternative concept for the federal state or the state of Australia in its entirety, it becomes clear that it would be ready to work on bottom-up-approaches to governance in Martuwarra's river catchment.[191] These would especially focus on schemes that enable humanity to deal with the repercussions of climate change.[192]

The MFRC, therefore, shows a willingness to tackle problems arising from deficiencies in the democratic process. Furthermore, it has the courage to point at structural problems that amount to a political system that does care more for economic interests than for the well-being of people. This undoubtedly shows that Indigenous thought is very much capable of having humanity in its focal point; it

about solutions for the climate crisis is especially important, cf RiverOfLife, Poelina, McDuffie and M. Perdrisat, (2023) PLOS Water 1 (3).

[188] Poelina and Clark, 'Sharing' 27:52.

[189] RiverOfLife, Poelina, McDuffie and M. Perdrisat, (2023) PLOS Water 1 (7).

[190] RiverOfLife, Taylor and Poelina, (2021) AJWR 40 (50); RiverOfLife, Poelina, McDuffie and M. Perdrisat, (2023) PLOS Water 1 (1, 4).

[191] Poelina and Clark, 'Sharing' 32:08; RiverOfLife, Poelina, Alexandra and Samnakay, 'A conservation and management plan' 44, 60.

[192] Poelina and Clark, 'Sharing' 39:21.

serves to remind Western political thought of its own governing principle to put humans and their comprehensive prosperity – rather than economic interests – first.

V. Conclusion

Some commonly-held beliefs about RoN and Indigenous thought were challenged by examining the example of the pursuits for legal standing for Martuwarra. First and foremost, this example highlights that it is possible to conceive a concept of RoN that is aware of the colonial dynamics still at play and is designed specifically to circumvent them. Even more interesting, however, is the way the MFRC achieves this: Rather than a translation of Indigenous legal thought, legal standing for Martuwarra presents itself as a gateway for First Law. The Council refuses to narrow down the scope of what they perceive as an ancestral being to a specific set of rights that are ultimately defined by Western conceptions of rights. Instead, it proposes to view legal standing for Martuwarra as a means to introduce First Law unabridged into the legal system of Western Australia.

In doing so, the MFRC proposes another kind of emancipation by law. The Indigenous people of Martuwarra have identified the vital connection between the law and the society it governs. In insisting on the preservation of their traditional set of norms – including most prominently the river itself – they seek to preserve their cultural identity without limiting themselves to a specific traditional way of living. They wish to ensure their continued existence as a society without being restricted by Western perceptions of how an Indigenous person should behave.

However, the MFRC does not limit its pursuits to empower Indigenous people; it also shows what Indigenous thought has to offer to the world. In an – at least to the author's knowledge – unprecedented way, the Indigenous people of Martuwarra are ready to embrace the Anthropocene not only as the age shaped by humans but also as the age that may be shaped by any human. They are aware of humankind's shared responsibility and want to act accordingly. Despite neither majorly contributing to climate change nor profiting off it, the Indigenous people of Martuwarra want to do their share and propose different ways of governance and management to a hegemonial settler society that has reached a stalemate between ecological destruction and the desire to keep its wealth.

To achieve this goal, legal standing for Martuwarra is key for ensuring the Indigenous population's effective emancipation. Its legal personality, if looked upon as legal recognition of the Indigenous population's society, would serve as a transmitter for cultural rights for the Indigenous communities concerned and enable them to protect their environment. What sets this concept apart from many other implementations

of RoN is that it has been solely conceived by Indigenous people understanding both the power of rights in Western legal systems and the ontological gap between Indigenous und Western thought. They have taken the trouble to learn to understand the Western way of thinking while staying true to their ontological view of the world – and now they aim to communicate their insights to the settler society. At the moment, climate change is as important a topic as never before. The Indigenous people of Martuwarra have seized this chance to communicate their thoughts on climate change and environmental exploitation while Western people still ponder what to do. In providing a somewhat external perspective, the people of Martuwarra answer this question by offering an alternative model of living with nature and by posing counter-questions. If we want to understand which dynamics shape the world of the Anthropocene and climate change, we first have to understand: Who is the human shaping the world? Furthermore, we have to ask ourselves, who do we want this human to be?

VI. Bibliography

A. Primary Sources

1. Case Law

Mabo v Queensland [No 2] ("Mabo case") [1992] HCA 23; (1992) 175 CLR 1 (3 June 1992)

Mohd Salim v State of Uttarakhand & others, WPPIL 126/2014 (High Court of Uttarakhand, 5 December 2016) 2017 [19]

2. Primary Sources for Analytical Purposes

Government of Western Australia, 'Managing water in the Fitzroy River Catchment: Discussion paper for stakeholder consultation' (Government of Western Australia, 2020).

Madjulla Inc., 'Dangaba: The Story of Frecking' (2014), <https://vimeo.com/710662076> accessed 22 February 2024

Martuwarra Fitzroy River Council, '2022 Annual Review' (martuwarra.org, 2023) <https://assets.nationbuilder.com/martuwarra/pages/1/attachments/original/1679205598/_MFRC_Annual_Report_2022.pdf?1679205598> accessed 22 February 2024

Poelina A. and Clark C., 'Sharing First Law and Wake up the Snake' (23 May 2022) <https://vimeo.com/714059501> accessed 22 February 2024

Poelina A. and RiverOfLife M., 'Voices for the Martuwarra' (2020), <https://zenodo.org/records/3831837> accessed 22 February 2024

RiverOfLife M., Poelina A., Alexandra J. and Sammakay N., 'A conservation and management plan for the National Heritage listed Fitzroy River Catchment Estate (No. 1)' (University of Notre Dame, 2020)

RiverOfLife M., McDuffie M., Poelina A., 'Martuwarra Country: A Historical Perspective (1838-present)' (The University of Notre Dame Australia, 2020)

RiverOfLife M., Pelizzon A., Poelina A., Akhtar-Khavari A., Clark C., Laborde S., Macpherson E., O'Bryan K., O'Donnell E. and Page J., 'Yoongoorrookoo: The emergence of ancestral personhood' (2021) 30 Griffith Law Review (Griffith Law Rev) 505

RiverOfLife M., Poelina A., Bagnall D. and Lim M., 'Recognizing the Martuwarra's First Law Right to Life as a Living Ancestral Being' (2020) 9 (8) Transnational Environmental Law (TEL) 541

RiverOfLife M., Poelina A., McDuffie M. and Pedrisat M., 'Martuwarra Fitzroy River Watershed: One society, one river law' (2023) PLOS Water 1

RiverOfLife M., Poelina A., Coles Smith M., Jones M., McDuffie M., Shaw A. and Daido K., 'Yoongoorrookoo Creator of the Law' (2021), <https://zenodo.org/records/4568616> accessed 22 February 2024

RiverOfLife M., Taylor K. S. and Poelina A., 'Living Waters, Law First: Nyikina and Mangala water governance in the Kimberley, Western Australia' (2021) 15 Australasian Journal of Water Resources (AJWR) 40

RiverOfLife M., Romaine River U.S., Poelina A., Wooltorton S., Guimond L. and Durand G. S., 'Hearing, voicing and healing: Rivers as culturally located and connected' (2022) 38 River Research and Applications (River Res Appl) 422

Traditional Owners from the Fitzroy River Catchment Area, Fitzroy River Declaration (ecojurisprudence.org) <https://ecojurisprudence.org/wp-content/uploads/2022/07/fitzroy-river-declaration.pdf> accessed 22 February 2024.

3. Primary Sources for Contextual Information

Eco Jurisprudence Monitor, 'Fitzroy River Declaration Recognizing Martuwarra-Fitzroy River As A Living Ancestral Being' (ecojurisprudence.org) <https://ecojurisprudence.org/initiatives/fitzroy-river-declaration-recognizing-martuwarra-fitzroy-river-as-a-living-ancestral-being/> accessed 22 February 2024

Martuwarra Fitzroy River Council, 'About Us' (martuwarra.org) <https://www.martuwarra.org/aboutus> accessed 22 February 2024

Martuwarra RiverOfLife, 'Martuwarra Riveroflife' (researchgate.net) <https://www.researchgate.net/profile/Martuwarra-Riveroflife> accessed 22 February 2024

The University of Notre Dame, 'Professor Anne Poelina' (notredame.edu.au) <https://www.notredame.edu.au/research/nulungu/staff/Anne-Poelina> accessed 22 February 2024

Voices of the River, 'Awards' (voicesoftheriver.org) <https://www.voicesoftheriver.org/awards> accessed 22 February 2024

B. Secondary Sources

Adams M., 'Engaging with uncertainty: Shared governance in Indigenous conservation landscapes', Lars Elenius, Christina Allard and Camilla Sandström (eds.), *Indigenous Rights in Modern Landscapes: Nordic Conservation Regimes in Global Context* (Oxon: Routledge, 2017) 126

Anker K., 'To Be Is to Be Entangled: Indigenous Treaty-Making, Relational Legalities and the Ecological Grounds of Law', Nico Krisch (ed.), *Entangled Legalities beyond the State* (Cambridge: Cambridge University Press, 2022) 59

Barreto J.-M., 'Book Review: Contextualising Boaventura de Sousa Santos's post-colonial legal theory' (2017) 13 International Journal of Law in Context (IJLC) 558

Berger T., 'Denial, Deferral and Translation: Dynamics of Entangling and Disentangling State and Non-state Law in Postcolonial Spaces', Nico Krisch (ed.), *Entangled Legalities beyond the State* (Cambridge: Cambridge University Press, 2022) 35

Bertel M., 'Rechte der Natur in südamerikanischen Verfassungen' (2016) juridikum 451

Bertel M., 'Rechte der Natur in Südamerika – zwischen Biozentrismus und Anthropozentrismus', Stascha Rohmer and Georg Toepfer (eds.), *Anthropozän – Klimawandel – Biodiversität: Transdisziplinäre Perspektiven auf das gewandelte Verhältnis von Mensch und Natur* (Freiburg/München: Verlag Karl Alber, 2021) 191

Bhabha H. K., 'The Location of Culture' (London/New York: Routledge, 1994).

Burgers L. and den Outer J., 'Das Meer klagt an! Der Kampf für die Rechte der Natur' (Stuttgart: S. Hirzel Verlag GmBH, 2023)

Chakrabarty D., 'Postcolonial Studies and the Challenge of Climate Change' (2012) 43 New Literary History (NLH) 1.

Chapron G., Epstein Y. and López-Bao J. V., 'A rights revolution for nature: Introduction of legal rights for nature could protect natural systems from destruction' 363 (2019) Science 1392

Cleary P., 'Meet Ben Wyatt, one of the most accomplished MPs you've never heard of' (The Australian, 9 March 2013) <https://web.archive.org/web/20130317200239/http://www.theaustralian.com.au/national-affairs/elections/meet-ben-wyatt-one-of-the-most-accomplished-mps-youve-never-heard-of/story-fnhk4aej-1226593459242> accessed 22 February 2024

Dehm J., 'Reconfiguring Environmental Governance in the Green Economy: Extraction, Stewardship and Natural Capital', Usha Natarajan and Julia Dehm (eds.), *Locating Nature. Making and Unmaking International Law* (Cambridge: Cambridge University Press, 2022) 70

Duncanson I. and Seuffert N., 'Mapping Connections: Postcolonial, Feminist and Legal Theory' (2005) 22 Australian Feminist Law Journal (AFLJ) 1

Duve T., 'Entanglements in Legal History. Introductory Remarks', Thomas Duve (ed.), *Entanglements in Legal History: Conceptual Approaches* (Frankfurt am Main: Max Planck Institute for European Legal History, 2014) 3

Epstein Y. and Bernet Kempers E., 'Animals and Nature as Rights Holders in the European Union' (2023) The Modern Law Review (MLR) 1

Epstein Y. and Schoukens H., 'A positivist approach to rights of nature in the European Union' 12 (2021) Journal of Human Rights and the Environment (JHRE) 205

Faggiano M. P., 'Content Analysis in Social Research: Study Contexts, Avenues of Research, and Data Communication Strategies' (Leiden/Boston: Koninklijke Brill, 2023)

Franco P. A. I. and Caetano M., 'Analysing Decolonial Climate Perspectives: The Case of the Brazilian Legal Amazon' (Stuttgart: Institute for Foreign Cultural Relations, 2023)

Goldberg-Hiller J., 'Persistence of the Indian: Legal Recognition of Native Hawaiians and the Opportunity of the Other' (2011) 33 New Political Science (NPS) 23

Groglopo A. and Suárez-Krabbe J., 'Coloniality and decolonisation in the Nordic region: An introduction', Adrián Groglopo and Julia Suárez-Krabbe (eds.), *Coloniality and Decolonisation in the Nordic Region* (Oxon: Routledge, 2023) 1

Held M., 'Indigene Resistancia: Der Widerstand der bolivianischen TIPNIS-Bewegung' (Bielefeld: transcript Verlag, 2022)

Hill R., Harkness P., Raisbeck-Brown N. et al., 'Learning together for and with the Martuwarra Fitzroy River' (2022) 17 Sustainability Science (Sustain Sci) 351

Hjulman T. A., 'Rights of the naturised', Lars Elenius, Christina Allard and Camilla Sandström (eds.), *Indigenous Rights in Modern Landscapes: Nordic Conservation Regimes in Global Context* (Oxon: Routledge, 2017) 42

Howe K., 'Postcolonial Redemption in New Zealand: Treaty and Tribunal in Context' (2003) 22 Windsor Yearbook of Access to Justice (WYAJ) 99

Hughey M. W., 'The White Savior Film and Reviewers' Reception' (2010) 33 Symbolic Interaction (Symb Interact) 475

Kang K., 'On the problem of the justification of river rights' (2019) 44 Water International (Water Int) 667

Kelly G. and Bradfield S., 'Winning Native Title, or Winning out of Native Title?' (2012) 8 (2) Indigenous Law Bulletin (ILB) 14

Knauß S., 'Pachamama als Ökosystemintegrität – Die Rechte der Natur in der Verfassung von Ecuador und ihre umweltethische Rechtfertigung' (2020) 7 (2) Zeitschrift für Praktische Philosophie (ZfPP) 221

Malreddy P. K., '(An)other Way of Being Human: "indigenous" alternative(s) to postcolonial humanism' (2011) 32 Third World Quarterly (TWQ) 1557

Leimbacher J., 'Zu einem neuen Naturverhältnis: Die Rechte der Natur', Hans G. Nutzinger (ed.), *Naturschutz – Ethik – Ökonomie: Theoretische Begründungen und praktische Konsequenzen* (Marburg: Metropolis-Verlag, 1996) 73

Maurantonio N., '"Reason to Hope?": The White Savior Myth and Progress in "Post-Racial" America' (2017) 94 Journalism and Mass Communication Quarterly (JMCQ) 1130

McDougall R., Ryan J. C. and Reynolds P., 'Introduction: Postcolonial Literatures of Climate Change', Russel McDougall, John C. Ryan and Pauline Reynolds (eds.), *Postcolonial Literatures of Climate Change* (Leiden: Koninklijke Brill, 2022) 1

Mutua M., 'Savages, Victims, and Saviors: The Metaphor of Human Rights' (2001) 42 Harvard International Law Journal (Harv Int Law J) 201

O'Donnell E., 'Legal Rights for Rivers: Competition, Collaboration and Water Governance' (Oxon: Routledge, 2019)

O'Donnell E., Poelina A., Pelizzon A. and Clark C., 'Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature', Anne Poelina (ed.), *Martuwarra First Law Multi-Species Justice Declaration of Interdependence: Wellbeing of Land, Living Waters, and Indigenous Australian People* (University of Notre Dame Australia, 2021) 112

Poelina A. and Nordensvärd J., 'Sustainable Luxury Tourism: Indigenous Communities and Governance', Anne Poelina (ed.), *Martuwarra First Law Multi-Species Justice Declaration of Interdependence: Wellbeing of Land, Living Waters, and Indigenous Australian People* (University of Notre Dame Australia, 2021) 92

Poelina A., Taylor K. S. and Perdrisat I., 'Martuwarra Fitzroy River Council: an Indigenous cultural approach to collaborative water governance' (2019) 26 Australasian Journal of Environmental Management (AJEM) 236

Prentice C., 'River Writing: Culture, Law and Poetics', Russell McDougall, John C. Ryan and Pauline Reynolds (eds.), *Postcolonial Literatures of Climate Change* (Leiden: Koninklijke Brill, 2022) 93

Raimann E., 'Implikationen des Anthropozän. Über die Verortungen des menschlichen Subjektes innerhalb der "Geologie der Menschheit"', Stascha Rohmer and Georg Toepfer (eds.), *Anthropozän – Klimawandel – Biodiversität: Transdisziplinäre Perspektiven auf das gewandelte Verhältnis von Mensch und Natur* (Freiburg/München: Verlag Karl Alber, 2021) 82

Reynolds A., 'A coloniser's view: On healing and native title reform' (2022) 47 Alternative Law Journal (Altern Law J) 291

Rohmer S., 'Der Mensch und die Rechte der Natur', Stascha Rohmer and Georg Toepfer (eds.), *Anthropozän – Klimawandel – Biodiversität: Transdisziplinäre Perspektiven auf das gewandelte Verhältnis von Mensch und Natur* (Freiburg/München: Verlag Karl Alber, 2021) 212

Roy A., 'Postcolonial Theory and Law: A Critical Introduction' (2008) 29 Adelaide Law Review (Adel Law Rev) 315

Schacherreiter J., 'Postcolonial Theory and Comparative Law: On the Methodological and Epistemological Benefits to Comparative Law through Postcolonial Theory' (2016) 49 Verfassung und Recht in Übersee (VRÜ) 291

Smith K. K., 'Natural Subjects: Nature and Political Community' (2006) 15 Environmental Values (Environ Values) 343

Smith L. T., 'Decolonizing Methodologies: Research and Indigenous Peoples', 3rd edn (London et al.: Bloomsbury Academic, 2022)

de Sousa Santos B., 'Beyond Abyssal Thinking: From Global Lines to Ecologies of Knowledges' (2007) 30 Review (Fernand Braudel Center) 45

Stevens S. (ed.), 'Conservation Through Cultural Survival: Indigenous Peoples and Protected Areas' (Washington/Covelo: Island Press, 1997)

Stone C. D., 'Umwelt vor Gericht: Die Eigenrechte der Natur', 2nd edn (Darmstadt: Wissenschaftliche Buchgesellschaft, 1992)

Stone C. D., 'Should Trees have legal standing? Law, Morality, and the Environment', 3rd edn (Oxford: Oxford University Press, 2010)

Tanasescu M., 'Understanding the Rights of Nature: A Critical Introduction' (Bielefeld: transcript Verlag, 2022)

Tlostanova M., 'Decoloniality: Between a travelling concept and a relational onto-epistemic political stance', Adrián Groglopo and Julia Suárez-Krabbe (eds.), *Coloniality and Decolonisation in the Nordic Region* (Oxon: Routledge, 2023) 145