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The cover image is of Delta of the Yellow River, China (top) and Delta of the Zambezi River, Mozambique (bottom). Landsat imagery courtesy of NASA Goddard Space Flight Center and U.S. Geological Survey.

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PERSPECTIVES

WHEN A RIVER IS A PERSON: FROM ECUADOR TO NEW ZEALAND, NATURE GETS ITS DAY IN COURT

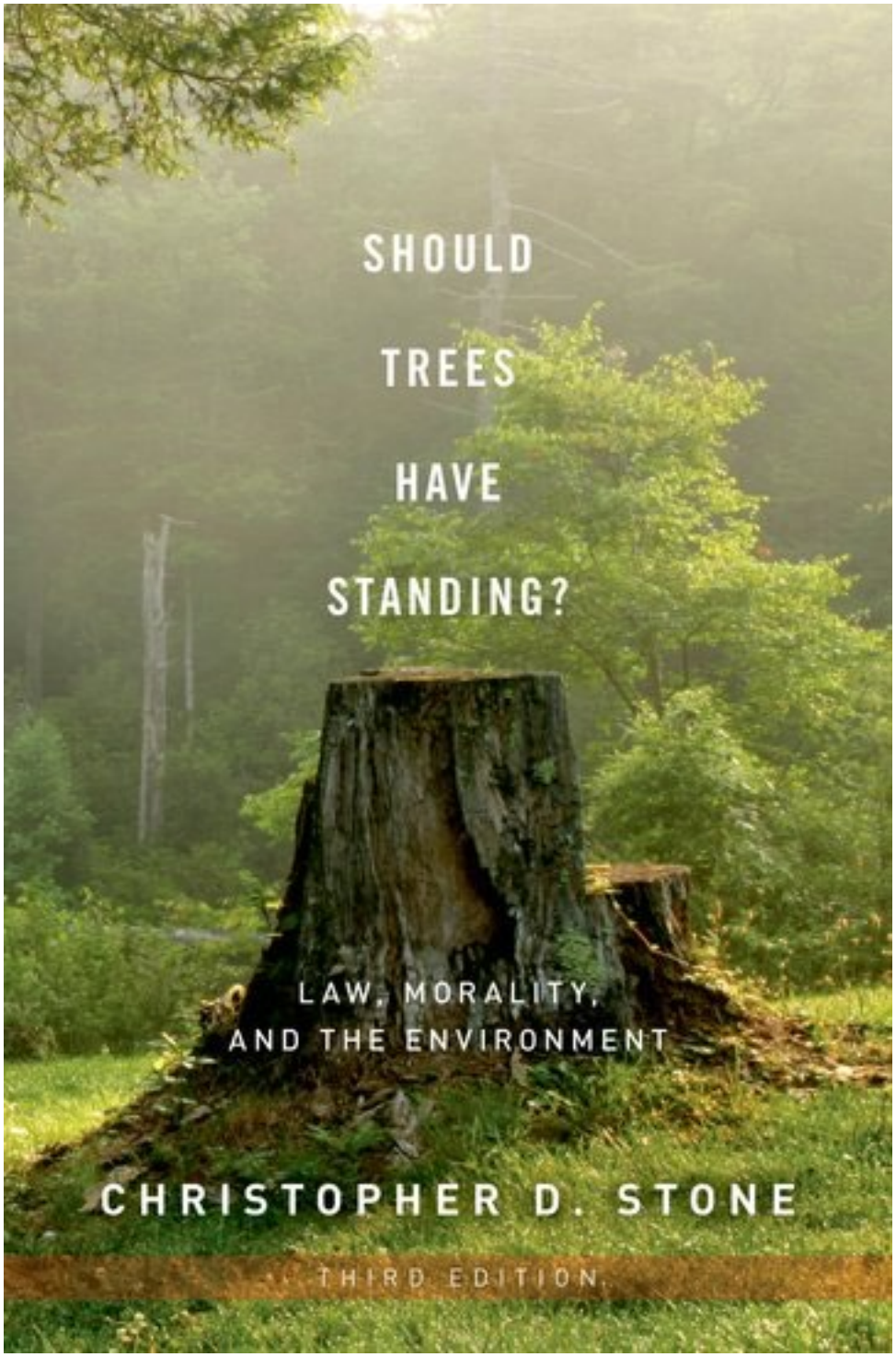
By Mihnea Tanasescu

In the early 2000s, the idea of giving legal rights to nature was on the fringes of environmental legal theory and public consciousness.

Today, New Zealand's Whanganui River is a person under domestic law, and India's Ganges River was recently granted human rights. In Ecuador, the Constitution enshrines nature's "right to integral respect".

What on earth does this all mean?

The Whanganui River, seen here, is now a person under New Zealand law. Photographer Alex Indigo, via Flickr, CC BY-ND.



The 1972 book that started it all. Boulder Rights of Nature

Fighting for nature

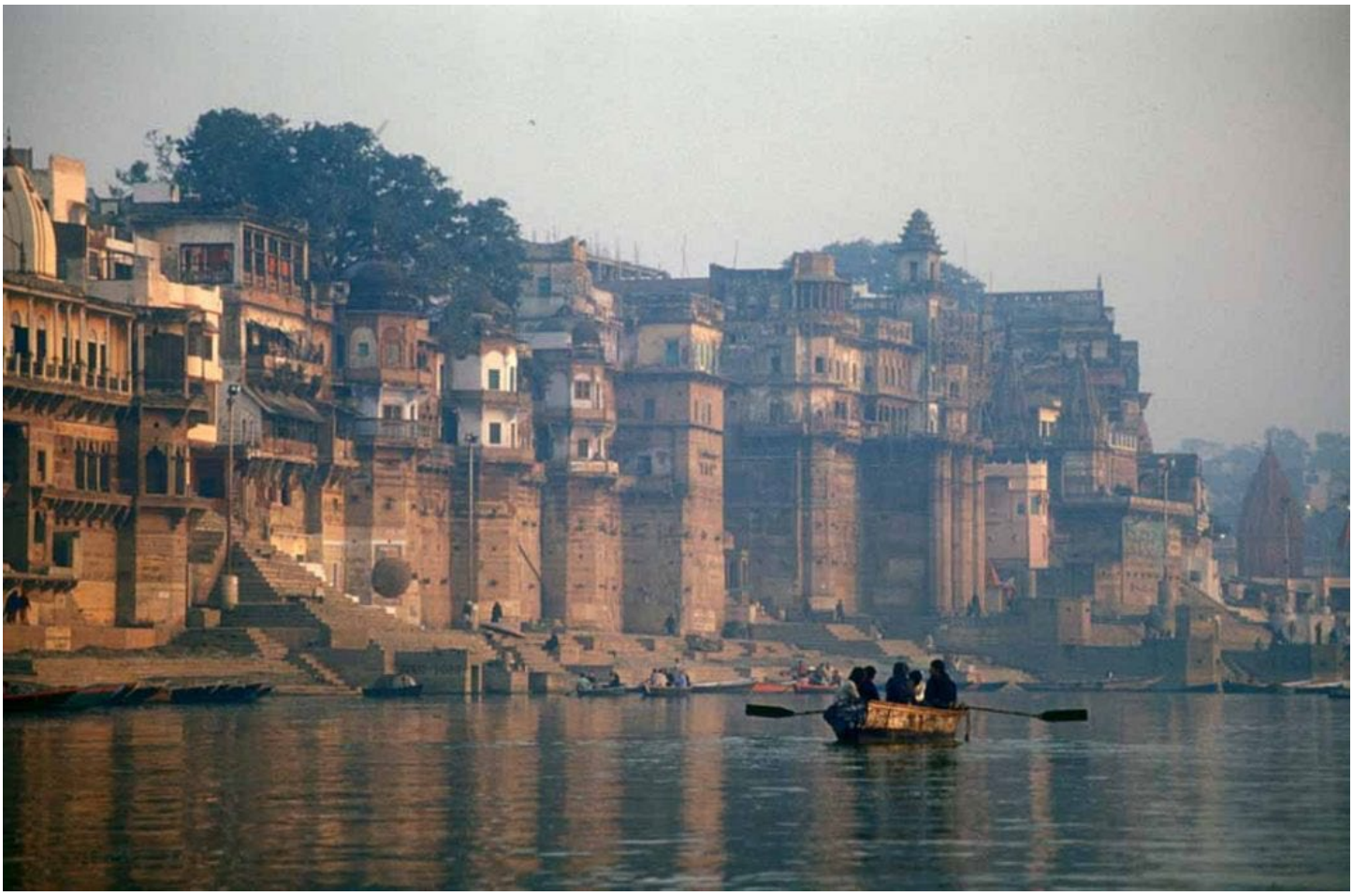
The theory of giving rights to nature was proposed in the 1970s by the American legal scholar Christopher D. Stone as a strategic environmental defense strategy.

In environmental litigation, many cases are unsuccessful because the people who bring the suit lack the legal standing to do so. It is hard for a plaintiff such as the US environmental protection organisation the Sierra Club to demonstrate why it – and not, for example, a property owner – has the power to sue over environmental damage.

In other words, it's difficult for nature's de facto representatives to defend its interests in court.

As a workaround, Stone suggested giving rights to the environment itself, because, as a rights holder, the environment would have the standing to bring a suit on its own behalf. Rights of nature, then, are not rights to anything in particular but simply a way to enable nature to have a legal hearing.

It took decades for lawyers to turn theory into reality. But in 2006, Tamaqua Borough in Pennsylvania became the first US community to recognise the rights of nature within municipal territory. Since then dozens of communities have adopted similar local ordinances.



The Ganges, which flows through the sacred city of Varanasi, was granted human rights in March 2017. Photographer babasteve, via Flickr. CC BY-ND

Entitled to "integral respect"

Nature is gaining rights internationally, too.

In Ecuador, article 71 of the 2008 Constitution states that nature "has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes".

In practice, that means that all persons, communities, peoples and nations can demand that Ecuadorian authorities enforce the rights of nature. One of those rights, according to article 72, is the right to be restored.

Ecuador's approach to nature's rights, which was soon emulated in Bolivia, were notable in two ways. First, it grants nature positive rights – that is, rights *to* something specific (restoration, regeneration, respect).

It also resolves the issue of legal standing in the most comprehensive way possible: by granting it to everyone. In Ecuador, anyone – regardless of their relationship to a particular slice of land – can go to court to protect it.

The first successful case was brought in 2011 by the Vilcabamba River. Its representatives in court were an American couple with riverfront property, who sued the provincial government of Loja, arguing that a planned road project would deposit large quantities of rock and excavation material into the river.

Overall, however, Ecuador and Bolivia have seen mixed results. In both countries, extractive industries continue to expand into indigenous territory, pursuing oil (in Ecuador) and mining (in Bolivia).

In Ecuador, civil society groups have struggled to exercise nature's rights effectively, in part because the domestic economy depends on the very environmentally-damaging activities they would like to target.

Personhood for the Whanganui

Things are going better in New Zealand, which passed its first rights for nature law in March 2017.

There, the Whanganui River, which flows across the North Island, has been granted rights of personhood. That means the river – but not nature writ large – can act as a person in a court of law; it has legal standing.

New Zealand's law also designates the river's representatives: a committee composed of representatives of the indigenous community that fought for these rights, as well as representatives of the Crown (New Zealand is part of the British Commonwealth).

This formulation, which more closely resembles the American theoretical origins of the rights of nature, diverges markedly from Ecuador and Bolivia's model by naming specific guardians and not granting positive rights.

If the Whanganui had the right to flow in a certain way, for example, then any change to its course would be a violation of its rights. Absent

this kind of right, the river is simply empowered to stand for itself in court; its legal guardians determine the positive content of its rights.

It is thus theoretically conceivable that the river might one day argue for its course be changed because that change is necessary for its long-term survival (say, as an adaptation to climate change).

Prioritising indigenous defenders

Because indigenous communities play an important role in fighting for nature's rights in all three countries, it is often assumed that they are and will continue to be the obvious guardians of nature.

After all, from China to El Salvador, indigenous peoples are on the front lines of environmental defence.

Members of Idle No More protest movement in Ottawa, Canada on January 11, 2013. Photographer Moxy. CC BY-SA 3.0

But there are problems with this assumption. The indigenous of the world are not a homogenous group that inherently cares for nature.

Additionally, unless the law designates a specific community the legal representative of nature, as in New Zealand, there is no guarantee that the intended community will be the one that ends up speaking for nature.

In Ecuador and Bolivia, the relevant legal texts use morally loaded language and rich references to indigenous communities that make clear the intended guardians of the nations' natural treasures.

But standing is in fact granted broadly, and neither of the two legal cases settled in favour of nature to date in Ecuador was brought by an indigenous group.

One suit was won by Americans (in the name of the Vilcabamba River) and the other, lodged on behalf of nature in San Lorenzo and Eloy Alfaro districts in 2011, was brought by the state, which sued to stop illegal small-scale mining operations in the area. The spirit of the law might have been violated in these cases, but the letter surely was not.

Ambiguous language could also permit abuse. In theory, given a sufficiently wide definition of standing and of nature, oil companies themselves could use the rights of nature to protect Ecuador's hydrocarbon reserves.

New Zealand's narrower approach may prove more effective in the long run. By granting natural entities personhood one by one and assigning them specific guardians, over time New Zealand could drastically change an ossified legal system that still sees oceans, mountains and forests primarily as property, guaranteeing nature its day in court.

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