A Critical Confluence

WATER, RHETORIC, AND SOCIAL JUSTICE

Edited by

CASEY R. SCHMITT, CHRISTOPHER S. THOMAS, AND THERESA R. CASTOR

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Chapter Fifteen

The Human Rights of a River

Codifying the Posthuman

Chris Ingraham

In March 2017, a high court in the Indian state of Uttarakhand, the region home to the glacial source of the Ganges in the north Indian Himalayas, ruled that the Ganges and Yamuna rivers could be granted the legal status of "living human entities" and accorded the full set of rights thereby implied. This meant that, in the eyes of Indian law, to pollute either river would now be tantamount to harming a human being, and prosecutable on that basis. In the court's ruling opinion—bolstered by a similar ruling in New Zealand from just a week earlier—the presiding judges justified the decision as a matter of improving the "preservation and conservation" of these rivers, which are each terribly polluted yet essential to the Indian social imaginary—not to mention to the everyday lives of the country's 1.3 billion people, most of whom are directly or indirectly impacted by these rivers in innumerable material and practical ways. By that July, however, the case had been appealed on grounds of being too impractical, and it remains stayed in the Indian Supreme Court as of this chapter's publication, over two years later. Articulating the Indian case of a river's human rights within the recent history of a broader legal movement advocating the rights of nature at large, in this chapter I discuss how such movements can be understood as endeavors to codify the posthuman.

While the mantle of "the posthuman" can be used in many ways, recognizing a river as a living entity possessing the legal status of a person certainly challenges us to go beyond traditional conceptions of "the human" and our supposed exceptionalism. A number of questions follow: Who represents the river's interests? (In both New Zealand and India, a pair of state officials were appointed as "legal guardians" to represent the rivers.) What sorts of

actions constitute a threat to the river's rights? (Pollution, presumably, but how to define that?) And what if the river seems complicit? (Is the river now culpable if a person drowns in it?) Are we now to look for ways that the river "speaks" for itself? And why is India giving human rights to some rivers when, socially and culturally, it has yet to recognize the immanent self-worth of women? The very enterprise of "giving" a river human rights, after all, is a deeply anthropocentric condescension, as if human laws or rights were even desirable to the river (from the river's standpoint), and not merely a paternalistic political act to bring the river within the jurisdiction of further human control and dominance over the environment. In a time when posthuman thinking is sweeping the academy, the legal assignation of human rights on a river can help us think more clearly about what is at stake in moving beyond anthropocentrism, particularly when it comes to environmental justice and those rhetorical measures undertaken to achieve it.

The case of the Ganges and Yamuna may be especially entangled with environmental justice because these rivers are so inseparable from the ecological, agricultural, economic, social, spiritual, and cultural well-being of the Indian people. The Ganges in particular poses challenging complexities. The historian Sudipta Sen (2019a, 2019b) has probably laid them out better than anyone. In northern India alone, he observes, the Ganges provides water for more than five hundred million people. Those with claims to the water as a resource are too vast to quantify, let alone monitor. From the thousands of towns and villages whose groundwater comes from the river, to those farmers, fishers, boaters, and others who live along its banks, millions of people hold traditional or customary rights to use the water in accordance with their long-standing rituals and ways of being, let alone the many (and often conflicting) claims made upon the river by those operating from commercial, governmental, or civic positions. Factor in the many engineering projects (some legal, others wholly DIY) to divert the river or to harness its energy, to clean it, to build tourist infrastructure around it, to regulate its flow or to dam it for agriculture and other purposes, along with the messy conflicts and corruption associated with a single river that flows through five separate Indian states, each with its own jurisdictional regulations, and it's easy to see how "environmental justice" in this case is itself a mighty stream with many, many tributaries.

Rather than attempt to analyze only a small brook of a case too complex to be done full justice in a chapter of this size, then, I wish to use the Ganges case as an anchor to hold in place a broader inquiry into how the attempt to give nature rights can be understood to operate rhetorically in service of environmental justice. In evoking "environmental justice," I mean something more than its standard meaning as a project of improving the uneven distribution of natural resources and human access to clean, thriving environments for all people. Legal avenues to pursue environmental rights and protections

through the justice system, that is, also imply a commitment to justice *for the environment*: not merely justice for humans seeking a more equitable and sustainable relationship with "their" environment, but also a commitment to the immanent justice due to the environment itself, irrespective of what people might look to gain or take from a relationship with it. Of course, the effort to gain human rights for rivers is undeniably a practical, tactical, and thoroughly rhetorical endeavor to open more pathways toward their preservation and conservation, in no small part to make the rivers safer, cleaner, and more sustainably suitable *for* humans. But this is not to suggest that it is productive or tenable to partition concerns for "the environment" here and concerns for "the human" there, as if the two weren't interdependent.

To the contrary, a more inclusive notion of environmental justice affirms an observation that Timothy Morton (2007) has made about the flaws inherent in the all-too-human concept of "the environment" to begin with. As Morton points out, "The very word *environmentalism* is evidence of wishful thinking. Society would be so involved in taking care of 'it' that it would no longer be a case of some 'thing' that surrounds us, that environs us and differs from us" (141). Despite the strategic advantage of giving rivers and other natural entities human rights, in other words, the effort to do so can also be read as a belated corrective for the environmental *injustice* perpetrated by the long-standing anthropocentrism that has made us vain enough to invent "the environment" as something separate from the human on account of its not always working the way we want. "In a society that fully acknowledged the idea that we were always already involved in our world," Morton observes, "there would be no need to point it out" (141). What I modestly aim to point out in what follows are some ways that legal interventions like the ones in India, New Zealand, and elsewhere begin to enact the very principles of ecologically inflected posthuman thought, with great consequences for how people perceive their relationship with the sensuous world around them.

ECOLOGICAL POSTHUMANISM

There's an old joke about someone hesitating to swim across a river. What finally persuades him across is some specious reasoning: if 60 percent of the human body is water, only 40 percent of him will have to swim. It may be a bad joke, but it does a good job of illustrating what for some scholars is a core tenet of posthumanism: namely, that any notion of "the human" must account for the constitutive entanglement of humanity with the nonhuman. If what we think of as the human consists largely of things that we do not think of as human, then we are left to make sense of humanity in different ways. In the joke, of course, whatever humor it attains derives from the sheer outlandishness of imagining that a human body is somehow part of water because

water is part of it. Humans may be mostly water, but we're *not only* water, and it's just that "not only" that authorizes a relationship to water predicated on our exceptional distinctiveness from it. To be human here is to be more than what is not, and that remainder is what our swimmer understands as the work that his very humanity mandates: precisely not "to be one with" the nonhuman, but to exert himself against it.

In the same way that explaining a joke can flatten all its humor, trying to account for the diverse constellation of concepts and commitments evoked by the term "posthuman" can deaden whatever feral vitality animates its multiplicity. Academic discussion of the posthuman today has become so broad that there's no guarantee that two scholars talking about it will be talking about the same thing. Generally, as I treat it here, posthumanism involves a project of challenging or thinking beyond normative (read: taken-for-granted) conceptions of the human and the human condition. In this sense, the "post-" in "posthuman" sometimes indicates a historical or temporal shift of some kind, perceived to mark an "after which" around how humans have come to understand themselves and our entangled relationship with what is not human. In contrast to conceiving of the posthuman's starting point as some pivotal event, technological singularity, or historical epoch that either already happened or may yet lie ahead, however, I instead follow Andy Miah's (2008) position that "the starting point should be an attempt to understand what has been omitted from an anthropocentric worldview" (72). In other words, in this chapter, the posthuman will designate the many-folded project of identifying ways to understand humanity that don't involve the assumption of human exceptionalism and anthropocentrism that can give license to appropriative relations toward the nonhuman "other."

Ecological thought widely acknowledges the basic view that "we are all in this together" even while acceding that those comprising such a "we" are nevertheless different from one another and implicated differently in ways of experiencing so-called common worlds. Cary Wolfe (2017), for example (extending Derrida's work on animals), has written that the view "that dominates ecological thought and environmental ethics" is that "we share the same world, we just experience it differently" (140). What ecological thought accordingly needs to do more of is to address how the different ways of experiencing and being are produced by legal systems, social practices, technological mediations, and cultural productions capable of fostering or destroying the nonhuman.

At risk of veering into bad stand-up, there's another joke that's useful here to illustrate the ways phenomenal experience is determined differently for different beings. Variations of it have been made by Aristotle, Marshall McLuhan, John Durham Peters, and others (for a summary, see Peters 2015, 55). The version I'll tell is from David Foster Wallace (2009): Two young fish are swimming along when an older fish swims by. "Nice water today,

'eh boys?" says the older one. When he's passed, the two younger fish turn to each other and say, "What the heck is water?" There are a lot of things the joke might illustrate, but its punchline pivots on the comical obliviousness of the younger fish to what, from a human standpoint, is so fundamental to a fish's existence as to go without saying. But the joke gets at something more substantive: namely, that some degree of this obliviousness is inevitable—and not just for fish, but for all living beings. In other words, there's a sense in which the environments in which all things are situated, and on which all living beings existentially depend, are nevertheless invisible to them. Disputations about human self-consciousness or symbol-use aside, humans are not unique in being epistemically and phenomenologically privy only to what the affordances of our bodies and technologies allow us to know and experience.

One productive way to think about the posthuman, then, is as a project that seeks to interrogate and negotiate the terms on which humans can, from the vantage of our inescapably embodied humanness, begin to imagine our own involvement in what exceeds the human. What is the form of thought for imagining the more-than-human from within the human? Is it hypothetical? Speculative? Science-fiction? Fantasy? Well, it can be all of these and more. But one of its forms is also *legal*. And it's the legal forms of thinking the posthuman—thinking beyond the free and rational human subject—that are particularly consequential because the law is a system, *the* system, that operates by taking an otherwise abstract notion of the "subject" and making it enforceable as a set of rules.

HUMAN RIGHTS AND THE ENVIRONMENT

The historical development of legal systems by and for humans has tended to privilege human interests at the expense of concerns for the nonhuman. Human laws, in other words, often justify and condone the exploitation or degradation of the natural world on the basis of an unexamined anthropocentrism whereby being human authorizes a dominating and imperialist relationship toward the environment. To the extent that legal environmental protections do exist, then, they tend not to protect the environment *per se*, but to protect the competing rights of humans to use or exploit natural resources and spaces without encroaching on the respective rights of other people and their mutual prerogatives to do so. As Edward Mussawir (2019) has argued, "There is no ecological perspective on justice that is broader than that defined by the narrow, private, even petty juridical interests of the claimants" (257). And these claimants are none other than humans, the only "subject" with rights authorized by law. In other words, the law protects human claims upon the environment from competing human claims thereupon, but it does not as deliberately protect the environment itself from these claims.

Such is the legal anthropocentrism that pervades jurisprudential thought and codifies an ethical system—to the extent the law regulates minimal standards of ethical behavior—premised upon the centrality of human purposes and prerogatives relative to all else. This unexamined anthropocentrism, which is already baked into the law, "is not just the fact that law is composed and constructed by humans for needs that they understand as uniquely their own. Nor is it the typical condition of recognizing and giving preference to the rights and interests and values of humans over those of other species. It is the projections of the very idea of 'man', the being and the ends and destinies of 'man', at the centre of the vision that law has of the world in general" (258). What Mussawir is pointing out here is how the law, when premised upon anthropocentrism, cannot help but replicate and codify the very social imaginary that, by conceiving of the human as the paramount protagonist of all existence, justifies the legal subordination of everything nonhuman in the human's service.

Though there is, of course, a longer history of environmental law and the many ways legal systems around the world have historically regulated the human use of natural environments and their resources, the anthropocentrism of much environmental law is particularly evident in the ways human rights rhetoric has, since the mid-twentieth century in particular, been used to promote legal attention to environmental protection and repair. By and large, lawmakers and citizens have been interested in improving the environment to the degree that humans have a basic right to enjoyment and benefit therefrom. That this point is rarely made in histories of legal approaches to human rights and the environment (at least those I have come across; see, e.g., Leib 2011; Boyle and Anderson 1998; Boer 2015; Knox 2018), attests to just how deeply rooted anthropocentric humanism is in the social imaginary that compels legal interventions pertaining to the environment.

In his history of legal approaches to human rights and the environment, for instance, John Knox (a professor serving in 2018 as UN Special Rapporteur on Human Rights and the Environment) presents a story whereby lawmakers have been interested in improving the environment to the degree that humans have a basic right to benefit from its affordances. In other words, without seemingly meaning to, Knox (2018) shows that the environment is important to the law because the environment is important for humans to use or enjoy. Consider the trajectory he charts. In 1968, the United Nations General Assembly held the first international conference on the environment to discuss "the continuing and accelerating impairment of the quality of the human environment." In 1971, Pennsylvania amended its constitution to include environmental rights, becoming the first government in the world to do so. The year after that, at another UN conference on the environment, the General Assembly adopted the Stockholm Declaration, maintaining that both human-made and natural environments are essential "to the enjoyment of

basic human rights." By 1976, Portugal became the first country to implement the constitutional "right to a healthy and ecologically balanced human environment." And the first *international* agreement to include an environmental right was signed in 1981, with the African Charter on Human and Peoples' Rights (649–50).

All of these examples rhetorically frame the environment as something *for* humans. For instance, multiple references to "the human environment" imply not an environment *of* humans but an environment somehow *belonging* to humans, just as the notion of "environmental rights" clearly does not imply the *environment's* rights, but the rights of humans to it—and to a particularly human formulation of what counts as its well-being, accessibility, cleanliness, and so on. Although using human rights as an avenue to vouchsafe protections for the environment is more liable to entrench anthropocentrism than to move beyond it, such a tactic does have its expediencies, as the scaling up of such protections from local to international levels attests. It is largely on account of successful arguments about the fundamental right of humans to a clean environment that local and international laws alike have enacted regulations to ensure that this right be fulfilled. Human rights arguments for environmental protections have accordingly been a source of meaningful legal change, even as they haven't meddled with initiating the larger and more epistemic social and cultural change that would involve questioning anthropocentrism itself.

Water justice has been an especially integral component in human rights approaches to environmental justice at large. In November 2002, the UN Committee on Economic, Social and Cultural Rights adopted the principle of a "right to water," defined as "the right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses" (General Comment No. 15 2002). Almost a decade later, on July 28, 2010, the UN General Assembly went a step further, adopting the landmark Resolution 64/292, which affirmed the position that clean water for drinking and sanitation are essential to the realization of all human rights. In other words, water was not just one of the many rights humans should be able to count on, it was so essential to human existence that other fundamental human rights could not be attained without it. Water came first—but, of course, only to the extent it came second to the people who depended on it.

RIGHTS OF NATURE

It's fitting that the Ganges should lately emerge as an exemplar of how the notion of environmental justice is beginning to push beyond these anthropocentric approaches to environmental law. The Ganges, as it turns out, has been associated with some of the earliest postindustrial attempts by people to

clean unhealthy environments in their own self-interest. As Jon McNeill (2000) describes in his sprawling environmental history of the twentieth-century, "The Ganges' fetid condition gave rise to one of the world's first antipollution societies, in 1886" (129). Considering that these fetid conditions have only grown worse since then—despite whatever the antipollution societies accomplished while undoubtedly acting less in the river's imagined interests than in their own—it's no wonder that the 2017 attempt to give the Ganges itself human rights should become the next progression in the history of the river's complicated relationship with those humans who both need and destroy it.

As I have explored elsewhere, the Ganges is materially entwined with the ceaseless cycle of life and death (Ingraham 2017). It has always been a sacred river, and accordingly a site for Hindu cremation rituals in which human flesh literally becomes river as bodies are burned and the ashes dispersed to disintegrate in the water. Of course, this means that the river becomes more polluted. But, in the context of human rights, it also means that the river, we could say, *already is human*. In other words, at least in a bare material sense, that means that any environmental law actuated in service of human interest is also already environmental law actuated in service of the river. Seen accordingly, the attempt to attribute legal personhood on the Ganges might be taken no more as an activist strategy than as an ontological point of clarification, calling out that we have always been posthuman.

The broader turn to rights of nature (as opposed to human rights *to* nature) is sometimes called "Earth jurisprudence," "Earth law," or "wild law," and it has emerged as an alternative framework recently gaining some global momentum in cases beyond just those in India (see Cullinan 2011; Burden 2014). The grim realities of climate change have disclosed how damaging it can be to presume that humans have a "natural" right to subdue and dominate the environment. In place of the human exceptionalism at the heart of this presumption some have sought to decenter the human in the interest of identifying universal rights shared by the human and more-than-human alike. Earth jurisprudence is associated with a social movement in environmental law known as rights of nature. A review of the vast literature and intellectual origins of the "rights of nature" is not my aim presently, but I do wish to show how some core tenets behind rights of nature invite us to think differently about rhetoric's role in action directed toward environmental justice.

To begin to do so, it's important to be familiar with the work of Christopher Stone, whose 1972 article, "Should Trees Have Standing?" galvanized the rights of nature movement by raising the question of whether "natural objects" should be accorded the legal right to bring an action or to appear in court (see also, Stone 2010). Responding to the question, Stone concludes that they should indeed have such rights, even if they cannot speak any human language. After all, he argues, plenty of things that can't speak are

already accorded legal standing, from corporations to fetuses. Moreover, legal provisions already exist allowing for guardians to speak on behalf of those who themselves can't, or those prevented from bringing action before the law for other reasons (e.g., being underage). As Stone saw it, if someone wishes to defend the rights of a tree—legally speaking, that means if someone wished to be a tree's "guardian"—there was no reason they couldn't bring legal action against those that might harm it. Stone's project, however, was not to suggest the law forbid the felling of trees or even more widescale deforestation. He rather wished to show that there was no tenable case, consistent with existing American law, for denying trees the right to standing.

What that right implied, as many have realized since, could apply to much more than just trees. Stone's argument began to decenter the human as the basis for environmental law, opening a path for valid legal arguments about the rights due to all parts of the natural environment, including Mother Earth herself. In 2008, Ecuador became the first of the world's nations to recognize the rights of nature in its constitution. According to Article 71:

> Nature, or *Pachamama*, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. (Constitution of the Republic of Ecuador 2008)

By 2010, a "Universal Declaration of the Rights of Mother Earth" had been drafted at the World People's Conference on Climate Change and the Rights of Mother Earth, in Cochabamba, Bolivia. The declaration's preamble marked its signatories' conviction "that in an interdependent living community it is not possible to recognize the rights of only human beings without causing an imbalance in Mother Earth" ("Preamble" 2010). Article 1.6 elaborated: "Just as human beings have human rights, all other beings also have rights which are specific to their species or kind and appropriate for their role and function within the communities within which they exist" ("Preamble" 2010). The Bolivian Plurinational Legislative Assembly passed the fundamentals of the declaration into law in December 2010, and a longer revised version in 2012.

The conferral of human rights on things widely agreed to be nonhuman does not mean suddenly saying they *are* human. It means extending certain legal benefits previously associated only with humans to that which is not. Conceptually, at least, the principle is not much different from extending the bedtime of one child to match that of an older sibling. Doing so doesn't suddenly make both siblings the same; it merely acknowledges that the younger should have some of the same privileges as the older. The challenge

is that we don't have a language, let alone a legal framework, for a notion of "rights" or liberal justice that does not presume a human basis for the justification of its existence. That basis is not just "human," full-stop; it rather figures the human in a particular way—that is, as a "subject" or legal person whose presumably exceptional capacities compared with the nonhuman, serve as the benchmark for our ethical rights. As Deleuze (2006) once said, though, "A conception of law as founded on jurisprudence can do without any 'subject' of rights" (350). The rights of nature conceived by Earth jurisprudence movements accordingly codify the posthuman in a Deleuzian way by challenging us to think about a subjectless, more-than-human basis for ethical rights.

In this sense, what Cary Wolfe (2009) has argued about both animal studies and disability studies could as well apply to rights of nature research: it fundamentally challenges "a model of subjectivity and experience drawn from the liberal justice tradition and its central concept of rights, in which ethical standing and civic inclusion are predicated on rationality, autonomy, and agency" (127). As Wolfe points out, the sense of agency taken for granted in the tradition of liberal humanism is one believed to express the intentionality of a willfully acting subject. And, I'd add, the quintessential expression of liberalism's rational, intentional, and freely acting subject is, of course, speech—a belief tied up with the historical invention of "communication" as such, that speech is the conveyance of private property into a commons (see Locke 1980, Chapter V, especially Section 27; also see Peters 1989). To acknowledge the rights of nature by law does not therefore just codify nonanthropocentric posthumanism. In doing so, it poses a radical challenge to traditional conceptions of rhetoric, and of rhetoric as a *human* art of speech in accordance with long-standing tendencies to think the human, à la Kenneth Burke (1966), as "the symbol-using animal" (3–9).

THE RHETORIC OF ANIMACY

When Christopher Stone (1972) made his important case for giving trees standing, their *inability to speak* was the tacit point of contention in his argument. Without much addressing speech or language directly, Stone essentially asked, *Why should speech matter?* The question was not just about the ability to use language, but about animacy itself. As Stone put it, "The world of the lawyer is peopled with inanimate right-holders: trusts, corporations, joint ventures, municipalities, Subchapter R partnerships, and nation-states, to mention just a few" (452). If these things have rights despite being inanimate and "incompetent" insofar as they can't speak except through humans who represent their interests as custodians or guardians, then why should animacy or speech matter for the rights of trees? Without perhaps

meaning to, Stone had struck upon a connection between the animate and language that has, in the study of linguistics as well as in political, cultural, and other spheres, long been used as a way to justify kinds of exceptionalism that are not just anthropocentric, but also predominantly male, straight, white, Western, and privileged.

As Mel Chen (2012) has shown in their book *Animacies* the very means of language is its animacy, a quality of liveness or sentience in how language operates. "Animacy" is accordingly a term used among cognitive linguistics to describe this quality and phenomenon of language. But Chen goes further, arguing that "animacy is political, shaped by what or who counts as human, and what or who does not" (30). From the great taxonomer Aristotle onward, animacy has been something meted out in hierarchies with political consequences (it's not by chance that most of Aristotle's writing about plants and animals—about the nonhuman—appears in his *Politics*). While many cultures and cosmologies have animacy hierarchies, however, their specific ordering is far from universal. Indigenous peoples the world over, in particular, have tended to treat the nonhuman as more animate, including the quality of being more communicative, than cultures from a dominant Western tradition.

The case of giving human rights to the Ganges again illustrates the stakes that are accordingly at hand. In a country with a majority Hindu population, many claims upon the river are entangled with religious beliefs that the water is holy, and hence immune to pollution. Yet when sewage, effluvia, and overall wastewater amount to over three billion new liters of unsanitary discharge pouring into downstream portions of the river *per day* (Scarr et al. 2019), the risk to public health is immense. This has only compounded concern by legal and environmental advocacy groups that the millions of Indians who aren't Hindu, yet are still connected to the Ganges in other ways, might be underrepresented by those appointed as the river's custodians and inclined to privilege regnant interests over others. Practically, that is, even the broad inclusivity of legally acknowledging a certain animacy of a river comes with its own threats of *exclusivity* by potentially favoring a dominant hierarchy of interests.

Nevertheless, as a historical matter, it has been the cosmological perspectives of religious and indigenous groups that have given rise to the first and most prominent adaptations of rights of nature around the planet. Ecuador would not have been the first country constitutionally to adopt such laws without the widespread belief of its indigenous people in *Pachamama*, or nature as a living being (for more on *Pachamama*, see Mamani-Bernabe 2015; for more on Ecuador's adoption of rights of *Pachamama*, see Humphreys 2017). The same is true of Bolivia, where the majority of its people are indigenous. Similarly, New Zealand's 2017 decision to grant the Whanganui River the status of a living entity would not have happened if not for more than a century of negotiating by the indigenous Māori iwi who live

along the river and see it as an ancestor. At issue is not just widespread social imaginaries or cosmologies in certain cultures, but the rhetoric of animacy that they abide and promote. Though indigenous cosmologies of course differ greatly, many of them don't abide the same Western separation of human and nonhuman into hierarchies whereby animacy is a matter of autonomy, rationality, and speech. Indeed, often just the opposite: in place of autonomy, interconnection; in place of rationality, intuition; in place of speech, sensation.

For Chen (2012), "If animacy not only works in different ways for different cultures but indicates different hierarchalizations of matter, then it is critical to distinguish between relatively dominant formulations of animacy hierarchies and relatively subordinated ones, a project that seems all too vital for studies that reify the place in 'nature' of non-Western or subordinated cosmologies" (29). The stakes here, in other words, are not just about how humans subjugate rivers or "nature" in general, but about how that subjugation is often carried out in ways that also subordinate nondominant groups, whether racialized, genderized, sexualized, or colonialized. This subjugation, moreover, stains a given culture's or society's ways of imagining how they can, should, or actually *do* get on together—or apart.

The great "we" now made evident by climate change may be marked by radical difference, but it includes humans, animals, and all biotic and abiotic "existents"—from water to bacterium to trees—insofar as we are all implicated in and impacted by a shared planetary crisis. "Existents" is the term that Elizabeth Povinelli (2016) uses in her book, *Geontologies*, as well as elsewhere, in lieu of less animate alternatives like "entities" or "things," to refer to more-than-human phenomena and bodies that have ontological weight. As I read Povinelli, "existents" is a sort of ontologically oriented analog to the agency-oriented "actant" we get from Latour. Existents can be actants and actants are existents. The mattering of all existents we can take as given. What merits ungivenness is the difficult question of how existents are given to matter or not, and to matter or not in particular ways, based upon their mattering to or for humans who have the power to nurture or extinguish them.

That power is so often justified and executed through a legal apparatus that condones it. For this reason, Povinelli has wondered if more-than-human existents, from fog to rocks to creeks, "should have an equal say in legal, political and ethical debates in late liberalism" (122). But is there a viable way for humans to envision the rights of nature *from nature's standpoint*? We are, after all, like the fish swimming in water without realizing it, unable to get outside our own condition except by speculation. It bears mentioning that there's an ethical division in play here that's roughly analogous to the Christian golden rule, as opposed to a Levinasian ethic of responsibility to the Other. Should we treat others as *we* would like to be treated, or treat

others as *they* would like to be treated? If we even provisionally operate according to the latter code, the challenge then becomes a matter of how to ascertain the ways that the Other would like to be treated, when language is not a viable means of communicating as much between species and existents. Might a river not "want" *river rights* instead of *human rights*? How would we know, and what might river rights involve?

THE ANIMACY OF RHETORIC

To think the posthuman from outside the human means acknowledging that if there is a rhetoric of animacy it is inseparable from the animacy of rhetoric. The recognition of rivers as living entities is one way to fulfill Latour's position that a parliament of nonhuman things needs to be better acknowledged and represented in human politics (1993, 144–145; 2005). When the legal infrastructure that establishes the legitimate terrain and rules for the political begins to open that terrain to include the nonhuman, a parliament of things begins to take shape. Access to water—and the use, pollution, and diversion of it—will always be "matters of concern" so long as water remains fundamental for the existence and sustenance of life. But that need not mean the concern should be limited to its human ramifications. If global warming teaches humans anything, it should be the power of nature to kick us out. That's a humbling power, one that persuades not through words, but through material animacies and obduracies that disclose the wisdom in recognizing that rhetoric is an animate energy, not limited by language but immanent to the being together of all existents. To cede such a recognition leads to an ethical imperative to organize this being together jurisprudentially around something other than a speaking "subject" of rights.

We should not forget that "nature," which sometimes goes by the name of physics or mathematics, has its own legal system: the laws of thermodynamics, the laws of classical mechanics, the laws of motion, and so on. These are not just rhetorically discussed as laws. The so-called laws of nature or physics are taken to be universal and obdurate, not symbolic or discursive, because they are believed to be permanent and unalterable by human design or engineering. As consistencies that organize the universe, nature's laws supersede human laws, providing the meta-framework in which all systems operate, legal or otherwise. But, as Foucault has shown, the very notion of the human has not been subject to such consistent understanding over time. In one of his more ominous passages, Foucault (1973) writes that despite the supposedly "luminous consciousness" of humanity, "Man [*sic*] is an invention of recent date. And one perhaps nearing its end" (387). The imminent end of "man" is not, however, an impending apocalypse, at least not as Foucault seems to conceive it, so much as an inevitable and forthcoming shift

in discourse about what it means to be human. If that shift has begun to occur, it is part of a long and ongoing project of creating hierarchies to delineate the order of things. That project is not just ongoing in places that give indigenous people more credence. It is also happening in the United States, where indigenous beliefs that long predate America as such nevertheless remain largely unheeded.

In February 2019, voters in Toledo, Ohio, approved a "Lake Erie Bill of Rights" ballot measure to legally protect the heavily polluted Great Lake by giving it rights normally associated with a person. This was not the first measure passed in the United States acknowledging the rights of nature as such, that is, as distinct from the rights of humans to a certain standard of environmental well-being. As David Humphreys (2017) has noted, the first was in 2006, when a local ordinance passed in Tamaqua Borough, Pennsylvania, recognizing ecosystems as "legal persons" in order to prevent the dumping of sewage sludge on wild land (463). In 2010, a similar ordinance passed in Pittsburgh, stating that "Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, possess inalienable and fundamental rights to exist and flourish within the City of Pittsburgh." The ordinance goes on to specify essentially what Stone had argued in his 1972 paper: that people "shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems" (Pittsburgh Pennsylvania Code of Ordinances 2013).

It's no accident, I think, that many efforts to achieve Earth jurisprudence through rights of nature have focused on water. What makes water an especially powerful locus of these movements is its archetypal and biological association with the sustenance of life itself. All life. Just think of media reports about the discovery that liquid water once flowed on Mars, or that a lake of water persists near its south pole even now, and how such reports are immediately followed by speculative inferences that the planet may have, or once have had, the conditions necessary to foster life. Liquid water is often hailed as *the* essential ingredient for all known forms of life, human or otherwise, on Earth or any other planet. Without water, no life. This is as good as law. If we are looking for a replacement to anthropocentrism, aquapocentrism would make a decent alternative. But the point is not to replace one center with another (nor to loose anarchy upon the world when the center will not hold). Instead, the aim should be to continue seeking ways to cultivate a new social imaginary that does not take as its for granted horizon the supposition of human superiority and centrality as a way to justify environmental justice. To do so will require greater attunement to the sensorial and animate more-than-human world all around, but also a daily practice of "serving" that world with deliberate attention and care.

Such was the aim in March 2017, when India's Uttarakhand High Court gave the Ganges and Yamuna rivers (and the glaciers that feed them) their

own rights, each as a "juristic/legal person/living entity." As it played out, though, political motives pushed the other way, too, and the case was soon brought to the Indian Supreme Court in an effort to overturn the High Court decision. When, in July 2017, the country's Supreme Court stayed the Uttarakhand High Court's order, it put the status of the rivers in limbo while awaiting further legal procedure that appears indefinitely delayed. In a way, this is appropriate: the river subsists in an ontological limbo of its own, always already human, always already not. The Supreme Court's preliminary basis for pausing the Uttarakhand ruling was that neither the Ganges nor Yamuna could be recognized as "living entities" because to do so would be far too impractical. Too many legal complications would follow, enforcement would be impossible, and besides, laws already existed to curtail pollution and to conserve the health of these rivers and their ecosystems. The trouble in India has been that existing laws have largely been insufficient given the rampant corruption around the regulation of the country's holy rivers, to say nothing of their overengineering by competing sources (privatized, state, and homemade alike; for more on the river's engineering problems, see Acciavetti 2015).

The limitations of the law as a solution to environmental justice, despite its many promises, comes into view when considering any legal apparatus's finite jurisdictional reach. The Ganges River may originate in the Indian Himalaya, after all, but it ends in Bangladesh's Bay of Bengal. Though geographers recognize the Ganges as one continuous river, that is, its legal recognition falls into two discontinuous systems. And in July 2019, Bangladesh one-upped the indecisiveness of Indian law when it comes to the Ganges's rights to personhood. Indeed, with its Supreme Court's landmark decision, Bangladesh became the world's first country to treat *all* of its rivers as living entities, granting each one, including the Ganges, the same legal status as humans. Though Bangladeshi law, of course, has purchase only in Bangladesh, the river doesn't know such geopolitical boundaries, and maybe that in itself is reason to think beyond restrictive rights and their codification when it comes to recognizing their worth and importance.

What it's important to acknowledge, in other words, is that the impracticality of more "posthuman" laws aligned with Earth jurisprudence is not sufficient to invalidate them. These laws are important not primarily because they help to ensure limited legal protections for important rivers, vouchsafing their preservation and conservation when other laws have failed, though these protections are real and desperately needed. Instead, rhetorics around the rights of nature are imperative even without their successful implementation, because only through the cultivation of such nonanthropocentric thought can we begin to live in more sympathy with the more-than-human with which we are invariably entangled and to which we have an immanent responsibility. Though it is not always wrong to act in human self-interest, it

is almost always not wrong to support the immanent value of others, human or not.

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