

DO TREES HAVE (UNDER)STANDING?

Speculating criteria for the legal competence of environmental personhood

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ABSTRACT

This is a post-humanist speculative writing piece on the legal competence of environmental personhood. The legal concept of environmental personhood was established to safeguard the environment and recognise Indigenous peoples' relationships to natural entities as a part of their rights. However, a personhood capable of legal actions only through a named guardian inevitably questions the capacity and competence of nature to speak for itself. This study evaluates the validity of this competence by considering nature's ability to observe, remember, communicate, and remain truthful. These elements are all studied here as aspects of language. The fragments of material for the study are collected from sources ranging from graphic novels to classics of literature, from anthropological studies and linguistics to landscape architecture. Such inquiry does not attempt to discredit the legal concept or to make claims for the environment as an autonomous legal actor; rather, it aims to study the possibilities of building capacity for guardianship to strengthen its legitimacy and ethicality in relation to multispecies natural entities.

INTRODUCTION

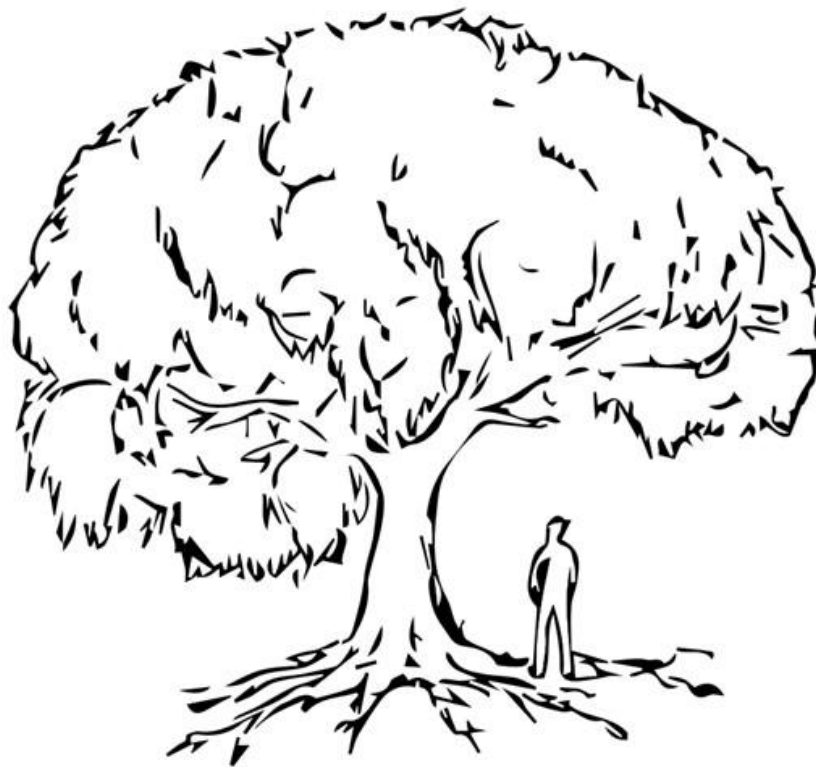


Figure 1

Digitalised drawing: "Standing under." Image credit: Joonas Vola

The title of this piece is a reference to Christopher Stone's article *Should Trees Have Standing* first published in 1972. It became the groundbreaking work for discussing the legal rights of natural objects and the development of environmental personhood. It builds on legal personhood, which is a foundational concept of Western law (Kurki, 2023, p. 1). Environmental personhood, in short, designates for certain environmental entities the status of a legal person, assigning them with rights, protections, privileges, responsibilities and legal liabilities. The focus is on the protection of nature and the recognition and fulfilment of Indigenous and human rights. Although the natural entities with legal personhood are still few, they exist through different national legislations around the globe, from New Zealand to the United States, from Canada to Spain. Each has had a unique path to existing as a legal person.

Due to the physical form and location of these legal entities, their access to courthouses is either limited or entirely impossible. A river would need to flood into the court, leaving it out of order and uprooting forest trees so that they lose their standing. Therefore, a designated guardian can act on the entity's behalf to represent it and to protect its rights. But how may

the legally represented entity express its will and give its consent? Here I will partially question guardianship as the solution for the legal representation of environmental personhood. I will consider the possibility that, to some extent, the environment could express itself within legal procedures, which falls under the capacity and competence of the legal subject.

What is meant by legal capacity? It is a quality denoting the aptitude of either a person or legal entity to have rights and liabilities. Visa A.J. Kurki differentiates passive legal personhood before the law from legal capacity as an incident of active legal personhood, calling it legal competence, where the legal person is “being empowered to decide about one’s own affairs” (Kurki, 2023, p. 8, n. 21). In his work in 1972, Stone does not speak extensively in terms of legal capacity or legal competence. He only asserts that a natural object, through its guardian, is competent to bring damage claims, and that legal action should go beyond competent persons with economic claims to defend threatened environments as such. A specific environmental entity or aspect of the environment that has been granted legal personhood or legal personality in principle “ha[s] the capacity to hold rights, under some legal system” (Kurki, 2023, p. 1).

But does it have legal competence without an acting guardian, given that a guardian ought to take care of the interests and legal actions of an incompetent person? Can a criterion for the environment’s competence be defined that indicates that the legal person has both the understanding and the capabilities to express or indicate such understanding? These definitions may differ between legal systems and legal procedures, yet the following criteria are drawn from those that are commonly used: ability to observe, ability to remember, ability to communicate and ability to remain truthful. Observations may be limited by sensory impairment and influenced by immaturity due to one’s youth. Memory is influenced, beyond recalling capacity, by the passing of time—for example, the time that has passed after the witnessed event and the reliability of the recalled event. The ability to communicate is limited by the ways in which one may utilise language, for example speech or writing, or maybe by the capacity to be read or to be heard. The latter also addresses the question to human agents and their capacity to understand nature’s communications, to observe it and to access its memory. It is rather a question concerning peoples’ literacy and listening comprehension.

POST-HUMANIST SPECULATIONS

In the spirit of post-humanism, I consider the first three criteria for competence—to observe, remember and communicate—as different yet simultaneous aspects of language. Language records and remembers observations and communicates them further, it is fully material and it is not limited to humans. The highly contested Sapir-Whorf hypothesis, or the theory of linguistic relativity, acts as an important inspiration for thought when discussing the relation between the world and words. The hypothesis claims that the grammatical and verbal

structure of a language determines or influences how humans exist and live in the world and that differences in language affect our thoughts, perceptions, and behaviour (Crystal, 2008, p. 422). That means that by studying how we use language to depict nature shows also how we perceive it, remember it collectively, try to communicate about it or with it, and how we speak our truth about it. Furthermore, linguistic relativity is not one directional. How things are spoken about influences how they are acted on, what they are and what they might become. This makes the relativity between the world and the language a target for speculation.

I concentrate on speculating scientifically to find “fault with currently accepted theories, and [...] lead to new ways of thinking” (Achinstein, 2019, p. x). Speculation happens when one is lacking certainty but has pieces of evidence that provide a reason to hold a particular belief (p. xii). As a method, speculation refers to both “the activity of speculating and to the product of that activity” (p. 1). I present historical, poetic, artistic, factual and fictional examples depicting nature and natural entities that help me to speculate on the linguistic competence of an environmental entity and our capacity to understand it. After doing so, I investigate what the fourth criterion (remaining truthful) would stand for.

In her novel *Little Men* (1871), Louisa May Alcott uses the phrase “sermons in stones, books in the running brooks” to communicate that, beyond classroom discipline and spiritual training in church, nature outdoors can be a teacher. This teacher does not only instruct children to learn about itself—nature—but also gives them physical and, furthermore, moral education, since God is speaking through all things. At the same time, in accordance with a post-humanist reading, stones and water can have a linguistic capacity: they suggest meaning, they record and replay events, they conceal memory and enable recollection and they have patterns and structure to follow, to build on and to fill in. Language does not operate upon described environment. It is deeply rooted in it.

Something quite similar is expressed in Craig Thompson’s graphic novel *Habibi* (2011). In one of the sections depicting the origins of language and Arabic script, a running and meandering river begins to dry and form small ponds. These separated areas of water that are still connected by the same riverbed read as written lines of *abjad*. Finally, the river dries completely, and the sounding water that has transformed into written language falls silent (Thompson, 2011, p. 31). This scene shows how environmental entities, such as major rivers, materially enable civilizations to develop along them, yet also face their own demise because of this development. Under growing cultivation, they stop being rivers and become something else. The question remains whether this transformation shows the capacity to communicate and remember or a lost competence to do so. It clearly entails a risk of losing those things which the language has referred to and from which our vocabulary and narratives have emerged from. Words become unworldly and empty of meaning.

Following David Abram’s *Spell of the Sensuous* (1997), inert letters have animated beings embedded in them, and even a cactus can speak when a Zuñi elder focuses her eyes upon it

and reads its silent voice (p. 131). It is the human's ability to observe, rather than the environmental entity's competence, that is in question and that carries the burden of proof. It is not then a question of whether nature can communicate but whether a human can observe, remember how to read and receive what is communicated. As reading often follows lines, and words follow one another, divided by gaps and pauses, so too may an environment be read *alongly*, whether this movement follows a river or a track (Ingold, 2007, p. 89). In studies presented by Tim Ingold, a path stands for remembrance, verbal maps are derived from observations and narrative journeys begin and end with communication. A mapping of "karsikko" (pruned trees) in Fennoscandia marks with horizontal lines the areas where people have traditionally communicated by removing branches from trees in specified ways (Konkka, 2022a, p. 85). These lines on the map may be read as an empty notebook in which one writes observations above the lines to remember later and communicate further. While these pruned trees are signs of human activity, they do not only indicate interaction with the natural world as a collection of physical objects that point out good fishing and hunting grounds as communication tools between humans in the region. They move beyond human observations and actions into the post-humous and spiritual realm of the dead human relatives and ancestors in the form of remembering and communicating with supernatural and natural forces, as well as remembering and reanimating those who have returned to the land and moved beneath it (Konkka, 2022b, pp. 61–81). Here language written with trees overcomes the threshold between human and nature, present and past, the living and the dead, material and spiritual, and natural and supernatural. Such concepts become highly relative instead of being fixed boundaries. These pruned trees will remember as long as they stand. It is another question whether people are competent to read their messages.

As humans impose language on humans, they may also impose language on landscape, subjecting it to grammar, letters and punctuation to create meaning and enforce norms and order. Lancelot 'Capability' Brown, the influential English landscape architect of the 18th century believed that a landscape has a capability that can be brought out in a grammatical manner, shaping it (see Gregory, Spooner & Williamson, 2013, p. 20; Kuiper, 2020) into what we might call a park or a cultural landscape, transforming natural landscapes from noise into cultivated speech. Here land has the competence to utilise language through human assistance and intervention. Sometimes these capabilities are not truly captured by linguistics alone but become meaningful only in relation to that living-world from which that language originates and in which it lives as well. In Ingold's example of A. Irving Hallowell, it is not the grammar that defines whether a noun such as "a stone" in the Ojibwa language expresses something animate or inanimate, but whether certain stones in practice performed as living things, while others did not (Ingold, 2002 pp. 96–97). This observation takes us beyond grammar to lived relational realities.

CONCLUSIONS

Environmental personhood is part of how we as humans talk about nature and how we discuss it through legal concepts. In line with linguistic relativity, the way how we talk inevitably influences what we can perceive, remember and communicate. Here the question is not only whether *it* observes, or if *it* remembers, or if *it* communicates. The question should be placed not only on the environment but also on our ability to understand it and its standing, to understand it through our human nature, enabling planetary justice by the force of law. That direction is also where Christopher Stone is taking his argument concerning the legal rights of natural objects or entities. He is not only discussing the capacity and competence of environmental entities to perform under law but is also concerned with how we should cultivate our personal capacities as humans to recognize more and more the ways in which nature is like us and those in which we are significantly different (Stone, 1972, p. 498). Maybe we can come in terms with nature by applying legal concepts in new and more just ways. Perhaps legal linguistics should be studied in tandem with linguistic relativity hypothesis, not only to subject nature to legal language but also to understand the nature of law. This comprehension would concern the potential assigned guardians of the natural entities, as well as the courts making decisions about them. Environmental entities as legal persons may not require a guardian for legal representation, but rather an interpreter. It is also in question whether language functions as a means of trust or a means of domination, and whether law and order enable rather than disable. That line of reasoning would place the last criterion of competence onto us as humans, asking whether we may remain truthful to justice and take an oath not to defile the planet or make human heritage an abomination.

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