Relational representation: speaking with and not about Nature

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Abstract

The transnational movement to recognise the rights of Nature continues to fuel experimentation by a growing number of jurisdictions in legal form, content, powers, and governance arrangements. In this paper, we focus on the mechanisms through which Nature is represented in various ways. There is enormous diversity in representational arrangements, but there is no clarity on precisely who should be representing Nature, or how Nature can be represented in human spaces, or even what the intent of this representation is (or should be). We describe a spectrum of representation that ranges from speaking about, to speaking for, to speaking with the natural entity. We develop a model of relational representation that shows the power of speaking with Nature to not only develop relations between the representatives and the natural entity, but also to enable a broader dialogue of knowledges with a wider pool of participants. By examining four case studies (the Mar Menor in Spain, the Rio Atrato in Colombia, the Birrarung/Yarra River in Australia and Te Awa Tupua/Whanganui River in Aotearoa New Zealand), we show how these diverse representational models are moving towards the relational end of the spectrum, and identify the challenges and opportunities of relational representation of Nature.

1 Introduction

Recognition of the rights of Nature is blooming across the globe, with over 409 rights of Nature initiatives in 39 countries (1). Holders of rights include Nature as a whole (e.g. the Ecuadorian Constitution, Arts 71-74), specific landscape entities (such as rivers, lakes, mountains, and forests, see 2-4), and individual species (such as manoomin (wild rice), see 5). The recognition of Nature as a legal rights holder transitions it from an object, over which humans have dominion, and with no powers to protest its own mistreatment, to a subject, able to claim what Tănăsescu describes as a ‘moral debt’ (6) and as well as the legal standing to sue on its own behalf (7). This ‘alchemical transfiguration [renders Nature] uniquely visible, and legible, to the law in ways that it has not been before’ (8).

In addition to the wide range of different mechanisms for recognising the rights of Nature (including proclamations, policies, local laws, state and federal legislation, and court rulings, see 1), there is also a multitude of mechanisms for the representation of Nature as a rights holder. In Ecuador, any citizen has standing to demand that public authorities uphold the constitutional rights of Nature (see 6). In Aotearoa
New Zealand, on the other hand, representation arrangements are tightly prescribed in the legislation (*Te Awa Tupua (Whanganui River Claims Settlement) Act 2017*, sections 18-20). *Te Awa Tupua* (the Whanganui River) has a ‘face and voice’, *Te Pou Tupua*, a position which is held by two people, appointed by the iwi of *Te Awa Tupua* and the Crown (9).

The diversity of representation arrangements highlights a major issue for rights of Nature: there is no clarity on precisely who, or how, Nature can be represented in human spaces, or even what the intent of this representation is (or should be). Stone’s original conception of Nature as a legal subject was imagined with the express intent of enabling Nature’s interests to be represented directly in court, so that damage to Nature could be taken into account directly, rather than filtered through the lens of associated damage to human beings (7). This notion had been also applied before to corporations, governments, ships or railroads, legally considered as legal persons (10,11). These basic extensions of traditional representation still rely on conceptions of personhood that are based on an ‘atomistic, isolated, individual making independent choices’ (12) to defend their interests in court. In doing so, this entrenches ‘Nature’ as an adversary, relying on its voice to be heard, and competing for outcomes against other self-interested persons. This can have the unintended consequence of reducing people’s willingness to protect Nature (13) and grossly misrepresents the inextricable relation of humans and human activity with Nature.

The Ecuadorian experience demonstrates that although it can take some time to gain genuine traction, there is real power in giving Nature a ‘voice’ in the court system (14). Beyond the courts, legal systems have also granted Nature a voice more broadly, enabling representation of Nature in policy and decision-making spaces. For instance, in both Aotearoa and Australia, the ‘voice’ of the river has a role in both policy-making and ensuring accountability and integrity (9,15).

The recognition of this voice in our legal and political systems has rehashed a never-ending theoretical dilemma with great implications in practice: what exactly do we mean by representation? And relatedly, how can Nature be ‘heard’ effectively within human systems for decision-making and dispute resolution? Can just anyone be Nature’s representative? What of those who have a clear conflict of interest, or without adequate power or funding to be effective? How do we know that Nature’s interests are being represented, as opposed to the interests of the person acting as representative? These are questions that have emerged...
for all sorts of representation arrangements (such as, who and how a legal guardian can represent the
interests of its representee, how an individual can represent the interests of a group without letting their
own interest permeate their exercise of representation). These questions warrant attention, and similarly
understanding what representation means for the rights of Nature is important both for humans and for
Nature. The definition of representation is forever evolving and elusive at times. However, the exercise of
its definition is imperative for its operationalization in practice. This means first, anticipating the potential
consequences of a particular conceptualization of representation as it gets implemented. As Tănăsescu
argues ‘the rights of Nature have a strong anti-democratic potential, for several reasons: rights are a forceful
representation, which leaves little room for deliberation… [and they can] subordinate the representation of
humans to a Nature which is, definitionally, always more important’ (6). Second, it means setting ourselves
free from pre-existing assumption of what representation is, and how it should look, and instead to embrace
the possibility that this ever evolving concept will yet take another turn as Nature is enabled representation
in human spaces.

In this paper, we explore Tănăsescu’s relational model of representation as an alternative to the standard
model of political representation. Re-evaluating what representation is and how the representation of
Nature is conceptualized, Tănăsescu takes this definitional turn to argue that representation as an exercise
of "claiming" makes more sense definitionally both for human and more-than-human variants of
representation (6). We consider how this definition of representation changes both our understanding of
representation and our expectations of the process of representing the interests of natural entities that have
been recognized as legal entities (persons, subjects, or living entities). We build on Tănăsescu’s model to
identify a relational spectrum of representation of natural entities: (1) speaking about; (2) speaking for; and
(3) speaking with. Both speaking about and speaking for are accounted for in the standard model of
representation, but speaking with requires a relational model of representation. We further propose a
definitional extension to Tănăsescu's initial conceptualization by expanding this third category by
considering representation as a dialogue of knowledges, with a clear role for the representative in enabling
this dialogue. We use four case studies of waterway legal entities to document how these entities are being
represented now and bring nuance to the translation of these forms of representation into practice. The
cases portray how the recognition of rights to these natural entities is pushing the boundaries of what we
have defined and understood as representation in practice and is eliciting new approaches to decision 
making. We document both the mechanisms of representation and the intent of that representation and 
assess where these case studies are placed along this relational spectrum of representation. Our analysis 
identifies common themes, as well as some of the challenges for effective and relational representation.

2 Representation

Nature now has rights in an ever-growing number of jurisdictions around the world, and ‘[r]ights… demand 
representation’ (6). But what is representation? What is it attempting to achieve? Representation is as elusive 
of a concept as it is an evolving one.

Pitkin states that representation involves ‘making present in some sense of something which is nevertheless 
not present literally or in fact’ (16). Centring the representative-constituent relationship the literature 
emphasises representation as delegation (17) or representation as a trustee that will make decisions for the 
overall good of those being represented (18). Applying a constructivist lens (19) instead defines 
representation from the citizen perspective (20) and a systemic approach brings to light that representation is a 
process mediated by trust that must expand traditional legislator-constituent relationships to draw on 
disenfranchised groups experiences through models of engagement that superseed the current deliberative 
model (Williams, 2000).

Tănăsescu notes that these concepts of ‘principal/agent, trustee/delegate, and authorization/accountability 
have for a long time been the dominant ones for a theory of representation’ (6). Urbinati and Warren 
describe the ‘standard account’ of democratic representation as having:

‘four main features. First, representation is understood as a principal agent relationship… thus separating 
the sources of legitimate power from those who exercise that power. Second, electoral representation 
identifies a space within which the sovereignty of the people is identified with state power. Third, electoral 
mechanisms ensure some measure of responsiveness to the people by representatives and political 
parties who speak and act in their name. Finally, the universal franchise endows electoral 
representation with an important element of political equality’ (21, emphasis added).
Tănăsescu argues that the ‘standard model proposes that representation is supposed to realize the interests and wishes of a constituency’ (6). Yet the ‘the standard account has been stretched to the breaking point’ (21), due to the increasing complexity of issues and increasing numbers of what Urbinati and Warren term ‘voice entrepreneurs’: nonelectoral representative forms including non-governmental organisations, advocacy groups, transnational organisations, civil society groups, and alternative decision-making forums.

More-than-human representation, in particular, ‘has come to question most, if not all, parts of the standard model’ (6). Instead, Saward argues that we ‘need to move away from the idea that representation is first and foremost a given, factual product of elections, [but is rather] a precarious and curious sort of claim about a dynamic relationship’ (22, emphasis added).

2.1 Representation as relationship

In his 2016 book, Tănăsescu develops the concept of representation as relationship, ‘a process whereby political subjects are summoned (intra-subjective) and enter a relation of the generic form ‘us’ doing this on behalf of/speaking for/warning against/fighting against, ‘them’ (inter-subjective)’ (6). He defines representation a ‘relational activity of claim-making’ (6), in which it is not the beings themselves who are represented, but rather the relations, both ‘internal to the subject, as well as inter-subjective’ (6).

Representation thus reflects the ‘irreducible multiplicity’ of subjects and emphasises the central importance of relationships both within and between subjects (6). This is an active, dynamic relationship which is constantly being renegotiated between represented and representative (and further, between the representative and the rest of the world).

In doing so, this approach to representation challenges the role of the represented as speaking in the interests of the more-than-human entity. Unlike the standard model, which is ‘widely interpreted as relying on previously coalesced interests and identities that representation could ‘access’” (6), understanding representation as inherently relational enables us to accept that ‘we can never gather enough knowledge about a non-human being that would tell us how this being is to be represented’ (6). Rather, it enables representatives to make ‘representative claims … about preferred relations to the non-human world (‘this is what nature wants/needs/is telling us, and this is what we should do’)’ (6).
In both representing these claims (as a ‘voice’ for Nature), and in responding to them, this process of representation enables a ‘constant re-evaluation of who ‘we’, the group with political power and voice, want to be’ (6). What sort of relationship do we want to create with Nature? In posing this question, we also acknowledge that ‘everyone is already situated within relations with what we call Nature, and that often meaningful relations of respect already exist’ (6). In fact, as Graham has argued, such relationships are inherently human: ‘[t]he land, and how we treat it, is what determines our human-ness’ (23). Humans have always been ‘human-nature hybrids’, and correspondingly, ‘nature is always a humanized hybrid’ (6). The recognition of Nature as the holder of legal rights enables its representation in particularly human spheres (such as courts, policy-making and even markets), but in understanding representation as relational, we do not need to treat Nature as an ‘other’ to whom we are granting (human) representation. It can be seen, rather, as a way of elucidating and re-negotiating these pre-existing, intertwined relationships of mutual interdependency.

Tănăsescu’s relational model of representation also aligns with recent developments in the concept of personhood. Rather than reinscribing the idea of personhood as an atomised individual, modelled on the White, wealthy, able-bodied man, personhood is beginning to be seen as relational, both in the wider, moral sense (24) and within the strictly legal framework (12). While accepting of the individual right to personhood, O’Donnell & Arstein-Kerslake (25) highlight the need of legal systems to evolve in a direction that recognizes that individual personhood is inherently relational. In other words, it is the person (or living entity) seeking agency in relation to the individual or group supporting them what is crucial to realize such representation (12).

3 A relational spectrum of representation

Kauaka e kōrero mo e awa, engari kōrero ki te awa [Don’t merely talk about the river, rather speak to and commune with the river].

In this section, we use the example of waterways (rivers, lakes, lagoons, wetlands, estuaries, aquifers) to illustrate a relational spectrum of representation. In focusing on one type of natural entity, we enable a richer comparison and deeper understanding, but we believe that this spectrum can be applied to other
forms of natural entity as a way of understanding the relationship between represented and representative, as well as between the representative and the wider community.

Waterways around the world have been recognised as legal entities of varying kinds: legal persons, legal subjects, living persons, and living entities (26). Of these, only living entities do not include legal rights or powers; but living entities do still raise the status of a waterway from a legal object, and enable both representation and a different kind of relationship between humans and waterways.

We begin with the status that most waterways still have, that of legal object in which waterways are spoken about, and move through different modes of representation: speaking about and for (a paternalistic model that assumes we can objectively identify the best interests of the waterway), and speaking with (based on relational closeness and an enduring, dynamic relationship in which the representative learns the will and preference of the waterway). Speaking with the waterway can enable a two-way dialogue between the representative and the waterway, but this can also be extended to enable a dialogue of knowledges amongst many participants.

3.1 Speaking ‘about’ waterways

For water, the dominant paradigm is one of resource management, especially in settler colonial jurisdictions (27). Water is an object over which humans have dominion, and there is an emphasis on ensuring that human use of this resource is efficient (extracting maximum value from each unit of water), equitable (at least for humans), and to a lesser extent, environmentally sustainable (28,29). Notably, this is not the case for Indigenous Peoples, who consider water to be kin, and whose laws embody relational responsibilities to water and waterways (30–33).

In the mode of legal object, water is spoken ‘about’ in many ways. Rivers and aquifers are described as water resources for cities, industry and agriculture. The health status of waterways is defined in terms of water quality, hydrology, biodiversity and other ecological values. Waterways are described as ecosystem service providers, delivering recreation, amenity, and other services to humans. Decisions are made about water and waterways without considering their needs beyond those of the ecosystem elements that have been documented, because in this model, the waterway has no holistic needs or agency.
Recognising waterways as legal entities is a way to overcome this classification of water as mere legal object. In doing so, we transform the relationship between people and waterscapes from a transactional relationship of exploitation and dominance into an enduring, reciprocal relationship of interdependence.

3.2 Speaking ‘for’ waterways

As waterways are recognised as legal entities in themselves, it has become possible for their representatives to speak ‘for’ them, and ensure that their interests are represented in the decision-making process. Speaking ‘for’ waterways aligns with the standard account of political representation, in which the representative can be understood as a trustee, speaking on behalf of the waterway. In fact, the mere exercise of granting rights to a natural entity when done through the courts, takes place with a plaintiff that is speaking for Nature.

Trustees as defined by (18) perform their representative functions by doing what they think is best for those represented. This approach to representation is embedded in two assumptions: first, that there is such a thing as the “common good” that the representative can identify and aim for; and second, that this representative has the capability to speak for others without having to necessarily communicate with their represented. Mansbridge (34) refers to the latter premise as the ‘gyroscopic’ representation, by which a representative ‘looks within’ to derive from their own experience conceptions of interest or ‘common sense’ to serve as a basis for the action. This conception is parallel to Pitkin’s (16) definition of ‘symbolic representation’ by which a representative speaks for, but also ‘stands for’, the represented. This is presumably the premise under which Stone first imagined the rights of natural entities to stand in court, as ‘environmental objects’ (7) to be represented through a guardian that can speak for its interests.

This form of representation runs up against the key difficulty identified by Tănăsescu: how do we know what is in the interests of Nature? In Ecuador, the Constitutional Court has articulated the water-related ecosystem rights of the Aquepi River, enabling citizens to speak for the rights of the river (14). Yet in doing so, the Court also constrained the rights of the river to the ‘[physical, chemical and hydrological] structure, functions [as service provision to humans and other ecosystem elements], and evolutionary processes’.

Although a significant step in articulating the rights of the river (and demonstrating how those rights could be upheld or contravened), this understanding of the river remains anthropocentric, colonial in its apparent preference for Western science (see 30), and ultimately limited in its ability to see the river holistically.
3.3 Speaking ‘with’ waterways

In a relational model of legal personhood, representation is a mechanism for giving expression to a person’s will and preference (rather than paternalistically acting in their best interests), which is contingent on a relationship of sufficient closeness that enables the will and preference to be expressed and understood (35). Relational personhood (and the necessary relational closeness) thus also reflects Tănăsescu’s position that representation is less about interests, and more about identities and values, enabling the ‘political person’ to be seen and heard (6).

In speaking *with* waterways, the representatives remain open to a growing understanding of the agency of the waterway. Although waterways may not act in a voluntary manner, they can nonetheless demonstrate a will and preference for particular modes of being, such as being free-flowing, with space to expand in flood and contract again in drier times. Increasing connection with the river, representation is thus a ‘process whereby subjectivities are created in the act of proposing preferred relations’, in which ‘human self-perception and self-understanding are at the centre’ (6)

In an extension of speaking *with*, it is possible for the representative to operate to enable dialogue between the waterway and many participants, who may then form their own relationship with it. The representative seeks not only to help the waterway communicate its will and preference to others, but also to draw others into conversation, and relationship, with the waterway. In a human context, this both strengthens and dilutes the role of the representative. On the one hand, the representative’s relationship with the waterway is enhanced through its role as enabler of dialogue, but on the other, as more people develop their own relationships with the waterway, they too begin to take on the role of representative, reflecting the ‘irreducible multiplicity’ of the river and its representatives (as multiple versions of the waterway, and its representatives will always exist), and thus a multiplicity of relationships between people and the waterway (6). Through Watson et al’s (35) model of relational closeness, this mode of representation may also help to shift ‘human self-perception’ from the centre (6), and instead bring each of us into relationship with the waterway.

In operating on this spectrum, the ‘representative position adopted by the representative signals to the audience a preferred relation to the subject of representation’ (6). In the next sections of the paper, we
explore how this spectrum is reflected in four case studies of waterways recognised in law as legal subjects and/or living entities.

4 Methods

Comparative analysis of four case studies is employed as means for theory exploration and development (36). The use of case studies is guided by the premise that theory development requires from ‘a selection of diverse contexts to explore ideas rather than cases to test ideas’ (36).

A mix of purposive and convenience sampling were employed to select the case studies based on the following criteria:

1. The recognition of a water-based ecosystem as a natural entity with the status of a living being or as a legal person;
2. The recognition of the new status of the natural entity in legal instruments (legislation or case law); and
3. A requirement to establish a representative body that speaks on behalf of the natural entity (possibly alongside and complementary to the recognition of any citizen’s ability to represent the natural entity in court).

These criteria were chosen to ensure that comparative analysis would be possible across a limited number of case studies. We recognise that the nature and geography of the natural entity may affect the way it is represented, so we have focused on waterways, limiting our case studies to three rivers and a lagoon.

Recognition of rights in law is also crucial, to ensure that representation is focused on legal mechanisms rather than the rights of the entity as a moral subject.

Data were collected across the four countries during 2022-2023 using interviews with key informants, observation, and non-structured discussions with stakeholders during workshops. Furthermore, a literature review of case specific documents was performed to encompass laws, regulations, policies, and strategies derived from each case study, as well as contextual documentation that was necessary to understand how those policies and regulations relate to a broader cosmology of policies and plans. Key informant semi-structured interviews were conducted in the context of a broader research project that aims at
understanding the implications that the recognition of Nature as a living entity has for land-use planning and policy making. Interviews and focus groups were conducted with a total of 56 stakeholders across the four case studies. The stakeholders interviewed include policymakers, council members, river guardians and representatives, and environmental activists. One of us is also a situated knower, in that they are a member of the Birrarung Council, which acts as a voice for the Birrarung/Yarra River.

Ethics Statement: The research was subjected to MIT’s institutional review board, COUHES (Committee on the Use of Humans as Experimental Subjects). Due to the subject and content of the study IRB approval was waived by Protocol ID: E-5034 and Protocol ID: E-4632. Consent for the interviews was obtained verbally following the prompt recommended by the MIT COUHES Investigator Responsibilities for Exempt Research protocol. A Spanish translation of such prompt was used with Spanish speakers. The data and findings from the interviews are kept anonymous unless the interviewee explicitly requested to be quoted.

4.1 Rights and representation of waterways: case studies

Mar Menor, Spain

The Mar Menor is a saltwater lagoon. This lagoon is separated from the Mediterranean Sea by only a narrow strip of sand that is about 22 km long and between 100 and 800 meters wide. Freshwater mixes with water from the sea, creating special conditions to host a unique ecosystem. The Mar Menor is considered the largest saltwater lagoon in Europe, and the lagoon together with its surrounding wetlands, were declared as a specially protected area of importance for the Mediterranean. These are areas that guarantee the survival of the values and biological resources of the Mediterranean; they contain ecosystems typical of the Mediterranean area or habitat of endangered species that have a special scientific, aesthetic or cultural interest (37). They are declared under the Convention for the Protection of the Barcelona Marine Environment and the Coastal Region of the Mediterranean 1976. In 2020, a report by the Spanish Oceanographic Institute described the situation of this lagoon and ecosystem as an ‘ecological crisis’ (38). This and other studies signaled that the health of the lagoon has been compromised by multiple sources. Pollution by heavy metals and metalloids and pollution from organic chemicals derived from industrial and agricultural runoff; as well as the construction of tourism infrastructure and housing developments by the shore, were identified as the
main culprits. The pollutants poured into the lagoon cause eutrophication which has resulted in episodes of anoxia (dangerously low levels of oxygen in the water). In severe episodes like the ones that took place in 2019 and 2021, anoxia killed millions of fish and other species in a matter of hours.

The case of the Mar Menor lagoon is the first case in Europe where a Natural entity has been granted rights. It is also the first case in the world in which Nature was granted rights through Popular Legislative Initiative. This way of legislating allows for citizens to present a legislative proposal to Congress. If the proposal has enough signatures supporting it, the Congress will take it into consideration and negotiate any amendments. The law then passes or fails following the conventional democratic process. The initiative advanced and succeeded in the midst of the pandemic and without institutional support (39).

The rights of the Mar Menor were recognized through Law 19/2022 on September 30, 2022. The law establishes the ‘legal personality of the Mar Menor lagoon and its basin (...) which is recognized as a subject of rights’ (Art.1). The recognized rights include: the right to exist and naturally evolve, which means ensuring the balance and regulation capacity of the ecosystem in the face of the imbalance caused by anthropogenic pressures coming mostly from the catchment basin; the right to protection, understood as the limiting, stopping and not authorizing those activities that pose a risk or damage to the ecosystem; the rights to conservation, which requires actions to preserve terrestrial and marine species and habitats and the management of associated protected natural spaces; and the right to restoration, which requires, if damage has already occurred the need to repair and restore (Art.2). Further details on the management, including specific governance and representation mechanisms, are being crafted as part of an upcoming regulation that further expands on the extent of the law.

The declaration of the legal personhood of this lagoon has led to the establishment of a series of institutional arrangements that aim at both recognising and representing its interests (Table 1). The Tutoria del Mar Menor, as its main representative, is formed by spokespersons from three committees. These committees represent three perspectives: the scientific, the political and the citizens. These committees are responsible for the establishment of monitoring indicators, information dissemination about the law, and the proposal of new actions to protect the lagoon, amongst others (Table 1). Furthermore, individual citizens are also entitled by law to bring to court any potential breach of the legislation that may be endangering the lagoon.
The recognition of the rights of the lagoon has prompted the establishment of a series of committees to represent the lagoon. Legal experts that worked closely with the initiative have pointed out that the law is already being used as a basis to defend the integrity and health of the lagoon in the courts with pending court cases. Institutionally and socially the law is bringing a new perspective into the relationship of the lagoon with the communities that inhabit its basin.

Table 1: Representation for Mar Menor

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<tr>
<th>Representative/s</th>
<th>Role</th>
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<tr>
<td><strong>Governmental Committee</strong></td>
<td>It will be made up of thirteen members, three from the General State Administration, three from the Autonomous Community and seven from the citizens, who will initially be the members of the Promotion Group of the Popular Legislative Initiative. The Committee of Representatives has among its functions that of proposing actions for the protection, conservation, maintenance and restoration of the lagoon, and also that of surveillance and control of compliance with the rights of the lagoon and its basin. This committee takes into account the contributions of the Monitoring Commission and the Scientific Committee, and works in cooperation with them.</td>
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<tr>
<td><strong>Scientific Committee</strong></td>
<td>The Scientific Committee will be made up of independent scientists and experts specialized in the study of the Mar Menor, proposed by the Universities of Murcia and Alicante, by the Spanish Institute of Oceanography (Centro Oceanográfico de Murcia), by the Iberian Ecology Society and by the Council Superior of Scientific Investigations, for a period of four years (with renewable terms). The Scientific Committee will have among its functions that of advising the Committee of Representatives and the Monitoring Commission, and identification of indicators on the ecological state of the ecosystem, its risks and the appropriate restoration measures, which it will communicate to the Monitoring Commission. The legislator’s intention is to establish an independent Scientific Committee. Such independence is intended by requiring that all members appointed have recognized...</td>
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<tr>
<td>Representative/s</td>
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<td>scientific prestige, and by providing no remuneration for their work (which relies on the members retaining their existing research roles with their current employer).</td>
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**Monitoring Committee**

The Monitoring Commission (guardians) will be made up of a regular person and a substitute representing each of the riverside or basin municipalities (Cartagena, Los Alcázares, San Javier, San Pedro del Pinatar, Fuente Álamo, La Unión, Murcia and Torre Pacheco) designated by the respective Town Halls, which will be renewed after each municipal election period. As well as by a regular person and a substitute representing each of the following economic, social and environmental defense sectors: business, union, neighborhood, fishing, agricultural, and livestock associations – with representation of ecological agriculture and livestock and/or or traditional–, environmental defense, the fight for gender equality and youth. The Monitoring Commission has among its own activities the dissemination of information on this law, monitoring and control of respect for the rights of the lagoon and its basin, and periodic information on compliance with this law, taking into account the indicators defined by the Scientific Committee to analyze the ecological status of the Mar Menor in their reports. The members, who must have a previous career in the defense of the Mar Menor ecosystem, will be appointed by agreement of the most representative organizations of each of the aforementioned sectors, under the call and supervision of the Promotion Commission, and for a renewable period of four years.

### 4.2 Río Atrato/Atrato River, Colombia

The Atrato River is one of Colombia's longest rivers, spanning almost 800km. The Atrato River is the largest in Colombia and also the third most navigable in the country. The Atrato rises to the west of the Andes mountain range, specifically in the Cerro Plateado at 3,900 meters above sea level and empties into the Gulf of Urabá, in the Caribbean Sea. Its extension is 750 kilometers, of which 500 are navigable. The widest part of the river is 500 meters long and the deepest part is estimated to be close to 40 meters. It
receives more than 15 rivers and 300 streams. The Atrato River is located in the Chocó region (Chocó biogeográfico), one of the most biodiverse regions on the planet, with 90% of the territory deemed as a special conservation area and has several national parks such as “Los Katíos”, “Ensenada de Utría” and “Tatamá”. The Atrato River basin with 40,000 square kilometers represents just over 60% of the department’s area and is considered one of the areas with the highest water yield in the world (40).

The river was afforded rights by Colombia’s Constitutional Court in 2016 (Sentencia T-622 de 2016 de la Corte Constitucional de la República de Colombia, del 10 de Noviembre de 2016, hereafter ruling T-622/16). This ruling was the result of years of environmental and social impacts and ecosystem depletion derived from illegal and legal mining activity in the region. The Colombian Constitutional Court ruled in favour of the claimant communities, recognizing the government’s failure to address these environmental and social concerns and to enforce the law. In particular, the ruling stated that the Atrato River, its basin and tributaries will be recognized as an entity subject of rights to protection, conservation, maintenance and restoration by the State and ethnic communities (ST-622/16, order 1, p.156) The court ruling also ordered the creation of and implementation of a plan to decontaminate the water sources of Chocó, starting with the Atrato River basin and its tributaries, the riverside territories, recover their ecosystems and avoid additional damage to the environment in the region (ST-622/16, order 2, p.157); and the creation of action plans to recover traditional forms of subsistence and nourishment (ST-622/16, order 5, p.157).

The ruling was underpinned in the country’s 1991 constitution that boosted the concept of Ecological Constitution (Constitución Ecológica), which sees the protection of the cultural and natural wealth of the nation, the primacy of the general interest, the social and ecological function of property, the right to a healthy environment (ST-622/16, p.85) as intertwined. By declaring the river as a subject of rights the court took a leap forward in the interpretation of these rights to protect what the court coined as 5’biocultural rights’, which center on the ‘relationship of profound unity and interdependence between nature and the human species, and which results in a new socio-legal understanding in which nature and its environment must be taken seriously and with full rights. That is, as subjects of rights’ (ST-622/16, p.140).

As formulated in the court ruling, the representation was to be carried out by two guardians (Table 2): a state representative appointed by the President and that could be the Ministry of Environment, and one
representative from the community. Additionally, the court requested that a commission of guardians of
the Atrato River be formed. This commission would be comprised of the two aforementioned
representatives and an advisory team that would include the Humboldt Institute and WWF Colombia. (ST-
622/16, order 1 p.157, see also Decree 1148 of 2017). In debating however who would become the
representative from the community, the community reinterpreted the court ruling’s words to divide the
responsibility of such representative into 14 guardians that together would represent the river on behalf of
the community. Community representatives noted in interviews that ‘a sole guardian would have not known
the entirety of the river’, as the river and its landscapes change from its place of birth towards the river
mouth by the sea. After a process of consultation the river guardians were appointed together with the
other representatives as described in Table 2.

Table 2 Representation for the Río Atrato

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<thead>
<tr>
<th>Representative/s</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commission of Guardians</td>
<td>The Commission of Guardians of the Atrato River is formed by The Ministry of Environment and a Collegiate body of guardians. The main functions are to monitor compliance with the orders of the sentence, propose articulation mechanism and coordinate actions, lead pedagogy, socialization and awareness processes on the problem that is the object of the Constitutional Court Ruling.</td>
</tr>
<tr>
<td>Ministry of Environment and Sustainable Development</td>
<td>The Ministry of Environment is the legal representative of the river rights, its basin and tributaries (Decree 1148). This role expands the Ministries role set out by previous legislation (Law 3570 of 2011) that already established that the Ministry is in charge of promoting a relationship of respect and harmony between humans and Nature and defining the policies and regulations to which the recovery, conservation, protection, ordering, management, use and exploitation of renewable natural resources and the environment of the Nation, in order to ensure sustainable development.</td>
</tr>
<tr>
<td>Collegiate body of Guardians</td>
<td>The collegiate body of Guardians is intended to represent the “Consejos Comunitarios” (or community councils) across the river. The body is constituted by a woman and a man from each of the 7 consejos whose territory are by the river or its tributaries.</td>
</tr>
<tr>
<td>Representative/s</td>
<td>Role</td>
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<td></td>
<td>functions of the body are multifold: (1) they link the public entities responsible for compliance with the ruling and the Atrato riverside communities; (2) they represent the regional ethnic authorities and social organizations; (3) they socialize the court ruling by ensuring that the messages of protection of the river is appropriated by all the inhabitants of the basin; and (4) they advocate for the rights of the river to decision makers and other stakeholders to promote the proper implementation of the ruling. The river and its tributaries were recognized as a legal subject, so the Collegiate Body includes consejos comunitarios that are located on tributaries to the Atrato River.</td>
</tr>
</tbody>
</table>

Advisory Group  
The advisory group is comprised by WWF Colombia and the Humboldt Institute and can receive help from any public entity, research institution, environmental organization and civil society organization that wishes to partake of the river protection. The advisory’s group role is to ensure the protection, recovery, and conservation of the river by advising the legal representatives for the river. Besides the advisory group, there is a panel of experts that monitors and evaluates the court ruling’s compliance and that can also advise the guardians of the river.

4.3 Birrarung/Yarra River, Australia

Located in the south-eastern state of Victoria, the Birrarung/Yarra River is the first and so far only river in Australia to be recognised in settler colonial law as a living entity (41). The river flows for 242km, beginning in forested catchment of the mountains, flowing through agricultural land and eventually through the heart of Melbourne, the capital city of Victoria (42). The river supplies approximately 70% of Melbourne’s drinking water, and is a major source of biodiversity, recreation, and amenity in the city. The Birrarung is known to the Wurundjeri Woi Wurrung, the Traditional Owners of the majority of the river catchment, as the Birrarung, the ‘river of mists and shadows’ (43). Wurundjeri Woi Wurrung have always recognised that ‘the river and its environs are a living, breathing entity that follows Wurundjeri songlines and forms a central part of the Dreaming of the Wurundjeri’ (43).
In 2017, the settler state of Victoria passed the *Yarra River Protection (Wilip-gin Birrarung murrun) Act* (the Birrarung Act), which recognised the Birrarung and its lands as a ‘one living and integrated natural entity’ (section 1(a)). Notably, the Birrarung is not a legal subject and does not have rights and powers of its own in settler state law. This legislation was also the first statute in Victoria to include the language of Wurundjeri Woi Wurrung in the title and the preamble of the legislation. The Birrarung Act established new institutional arrangements for the care and management of the river, including:

- the Yarra River Protection Principles,
- the fifty year community vision (44),
- the Yarra Strategic Plan to give effect to the vision (42),
- identification of ‘responsible public entities’ who would be bound by the Yarra Strategic Plan (now known as *Burndap Birrarung Burndap Umarkoo*) and the Principles,
- a lead agency (Melbourne Water) to coordinate development and implementation of the Yarra Strategic Plan, and
- the Birrarung Council, an independent voice of the river to advise the Minister on the adequacy of implementation and advocate for the interests of the river (15).

Each year, the Birrarung Council prepares an annual report on the implementation, operation and effectiveness of *Burndap Birrarung Burndap Umarkoo*, which is tabled in Parliament (unedited) by the Minister for Water within seven parliamentary sitting days (section 57 Birrarung Act).

The Birrarung Act formally acknowledges the role of Wurundjeri Woi Wurrung, as the Traditional Owners, in the care and management of the river (45), and in 2023, following a formalisation of land claims, the Bunurong were also acknowledged as Traditional Owners of the mouth of the river (Table 3). Australia has no treaty with Indigenous Peoples, and the Traditional Owners of the Birrarung have not ceded their sovereignty over the river (42). The Birrarung Act is the first settler state legislation that begins to acknowledge the legally pluralist nature of water law in the Birrarung (45,46).

In response to the Birrarung Act, the Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation developed *Nhanbu narrun bha nargunin twarn Birrarung* (Ancient Spirit & Lore of the Yarra), which was launched alongside the fifty-year community vision in 2018 (43). In this document, the Wurundjeri Woi
Wurrung set out several representative claims to the Birrarung. They establish their connection to the river ‘through spirit, culture and nature’, and their long history with the river, as they have ‘lived with and known the Birrarung since the beginning’ (43). The Wurundjeri Woi Wurrung hold the creation stories for the Birrarung, which mirror the Western geological findings (47). They articulate their ‘deep cultural obligation and a birthright to look after the river’, drawing on their own laws as well as their status as Indigenous People (43). They position themselves as partners in the future care and management of the river, noting that in ‘sharing in the benefits that the river provides, we must also share responsibility for preserving and restoring the wellbeing of the Birrarung’ (43).

In addition to the representative role of the Traditional Owners, the Birrarung Council operates as an independent voice of the river established in the settler state law (Table 3). The Birrarung Council explains that it speaks ‘for the river… so that the river can be heard by all’, but also identifies a ‘more profound obligation [to] enable and support others to communicate with the river’ (48). The Birrarung Council identifies the interests of the river as those ‘reflected in the Yarra River 50-year Community Vision and Nhauhu narrun bha nargunin twarn Birrarung’ (49). In this way, the interests of the river are understood through the lens of the river’s relationships with people. In doing so, the work of the Birrarung Council also enables a dialogue of knowledges around the river, as the settler colonial ways of being and knowing are brought into conversation with Indigenous ways of being with and knowing the river.

The Birrarung Act has limited (if any) impact on water management (26), so other forms of representation remain in place. The legal rights to hold and manage water for the environment in the Birrarung continue to be held by the Victorian Environmental Water Holder (Table 3), which has decision-making powers on where, when and how the water will be used to improve the health of the Birrarung water ecosystem (26,50).

**Table 3 Representation for the Birrarung**

<table>
<thead>
<tr>
<th>Representative/s</th>
<th>Role</th>
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<tbody>
<tr>
<td>Traditional Owners</td>
<td>There are two Traditional Owner groups that have been formally acknowledged by the settler state: Wurundjeri Woi Wurrung and Bunurong. Each Traditional Owner group has the ability to speak for the lands and waters within a geographically defined area</td>
</tr>
</tbody>
</table>
(established under the *Aboriginal Heritage Act 2006*). Each Traditional Owner group upholds their own laws and cultural obligations to care for the river, and each recognizes the river as alive.

**Birrarung Council**
The Birrarung Council is the voice of the river. It is an independent statutory body established under the Birrarung Act. Members are appointed by the Victorian Minister for Water and include a minimum of two Traditional Owner representatives. Other members must include at least one representative of an environment group, an agriculture industry group, a local community group and at least two members with relevant skills (see section 49 of the Birrarung Act).

The Birrarung Council has statutory obligations to advise the Minister for Water on the implementation and effectiveness of *Bundap Birrarung Bundap Umarkoo* and to advocate for the interests of the river (section 48 of the Birrarung Act).

**Victorian Environmental Water Holder (VEWH)**
The VEWH is a statutory corporation established under the *Water Act 1989*. It holds all environmental water entitlements in Victoria on behalf of water ecosystems, and it holds an environmental entitlement to 17,000 megalitres of water that flows into the Upper Yarra Reservoir (a large onstream dam in the upper catchment of the river), as well as 55 ML (flowing in from Olinda Creek, a tributary of the Birrarung) and minimum flows maintained in the river. The VEWH works with Melbourne Water and Traditional Owners to determine where and how water available under the entitlement can be used, both in-stream and by pumping water into wetlands. The VEWH thus represents the interests of the Birrarung in the water on which it relies for health.

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4.4 Te Awa Tupua/Whanganui River, Aotearoa New Zealand

Te Awa Tupua (the Whanganui River), flows through the north island of Aotearoa New Zealand, from Mount Tongariro through forested hills and denuded plains before meeting the ocean at the town of Whanganui. The river is ‘of utmost importance to Whanganui iwi [tribes] and hapū [sub-tribes] who depend on it for their physical and spiritual sustenance and see it as an indivisible and living whole and revered ancestor’ (51).
In 2017, the settler state of Aotearoa New Zealand passed the Te Awa Tupua (Whanganui River Claims Settlement) Act (Te Awa Tupua Act), which attempts to settle historical claims that Whanganui iwi have made based on their rights to the river under Te Tiriti o Waitangi/Treaty of Waitangi (see, for example, 52). The legislation established the river as an ‘indivisible and living whole… from the mountains to the sea, incorporating all its physical and metaphysical elements’ (section 12) and a legal person (section 14). The river is a legal person who now owns itself, but this does not include any rights to water, and up to 80% of the river flows can be diverted for hydropower production (26,53).

There is a new governance framework, Te Pā Auroa, which comprises the legal status of Te Awa Tupua, Kia Matara Rawa (vesting of Crown land, including the river bed, in Te Awa Tupua), Tupua te Kawa (the intrinsic values of the river), Te Pou Tupua (the human voice of the river), Te Karewao (advisory body to Te Pou Tupua), Te Kōpuka (strategy body), and Te Heke Ngahuru (the Te Awa Tupua Strategy). This ‘complex collaborative governance regime for the river’ is supported by a ‘NZD 30 million fund (called Te Korotete) in furtherance of the river’s health and well-being’ (41).

Whanganui iwi and iwi with interests in the Whanganui (see sections 7 and 8 of the Te Awa Tupua Act) have consistently rejected and disputed the rights of the settler state government to own and control the river (52). Under their own laws (tikanga), they continue to have obligations to care for the river and act in its interests (Table 4). The framework for the negotiated settlement with the settler state government was underpinned by two principles:

- ‘Te Mana o Te Awa - recognising, promoting and protecting the health and wellbeing of the River and its status as Te Awa Tupua; and
- Te Mana o Te Iwi - recognising and providing for the mana of the Whanganui Iwi and its relationship with the River’ (54).

Te Kōpuka has further stated that ‘the primary voice of the Awa [river] comes from the iwi and hapū’ and that Te Pou Tupua must respect this and uphold this relationship of responsibility (9).

Te Pou Tupua provides a human face and voice for the river, and must act in the interests of the river, consistently with Tupua te Kawa (Table 4). Te Pou Tupua is currently comprised of Turama Hawira and Keria Pongo, jointly appointed by Whanganui iwi and the settler state government. Both have strong
connects to Whanganui iwi, which Macpherson argues indicates that their ‘authority, expertise as
[Indigenous knowledge holders, and contextual familiarity are important markers of their perceived
legitimacy’ as representatives of the river (51). Te Pou Tupua does not have a veto power for any resource
consents made under the Resource Management Act 1991, although decision-makers may consider the status
of the river and the values of Te Kawa in determining whether a consent will be given.

Both Te Karewao and Te Kōpuka have an attenuated representative status for the river, secondary to Te
Pou Tupua, but in fulfilling their functions, they must act in the interests of the river (Te Karewao) and to
advance river health and wellbeing (Te Kōpuka) (Table 4).

Table 4 Representation for Te Awa Tupua

<table>
<thead>
<tr>
<th>Representative/s</th>
<th>Role</th>
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<tbody>
<tr>
<td>Whanganui iwi (tribes) and hapū (sub-tribes)</td>
<td>Te Awa Tupua Act defines Whanganui iwi (section 8) and iwi with interests in the river (section 7). Whanganui iwi have specific roles under tikanga (Māori law) and continue to represent the river in multiple ways.</td>
</tr>
<tr>
<td>Te Pou Tupua</td>
<td>Te Pou Tupua acts as the face and voice of Te Awa Tupua (Whanganui River). It is comprised of two people, jointly appointed by the iwi (tribe) of the Whanganui River and the settler government of Aotearoa New Zealand. They must act in the interests of Te Awa Tupua and consistently with Tupua te Kawa. Te Pou Tupua has responsibility to act and speak on behalf of the river and its wellbeing, uphold its legal status as a living entity and legal person, administer the Te Awa Tupua fund, and exercise any landholder functions for any land vested in Te Awa Tupua.</td>
</tr>
<tr>
<td>Te Karewao</td>
<td>Te Karewao is an advisory body to support Te Pou Tupua (especially in relation to the expenditure of the fund), and must act in the interests of Te Awa Tupua and consistently with Tupua te Kawa. Te Karewao has three members, one appointed by Whanganui Iwi, one appointed by other iwi</td>
</tr>
<tr>
<td>Representative/s</td>
<td>Role</td>
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<tr>
<td>with interests in the Whanganui River and one appointed by local authorities.</td>
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</tr>
</tbody>
</table>

Te Kōpuka

Te Kōpuka is a strategy body, comprised of representatives of persons and organisations with interests in the Whanganui River, including iwi, relevant local authorities, departments of State, commercial and recreational users, and environmental groups. It is responsible for development and approve Te Heke Ngahuru (the vision for the river), and then to monitor and assess the implementation of Te Heke Ngahuru. In undertaking its functions, including establishing the vision for the care and management of the river, Te Kōpuka must act collaboratively to advance the health and well-being of the river.

5 Discussion

Through the exploration of these case studies we discuss the main characteristics of the form of representation that emerges when the recognition of Nature as a living entity/legal subject is imagined and implemented. Like the definition of representation in itself, the ways in which representation is realized in these cases is not clear cut, and the full spectrum of representation (speaking about, to speaking for, and speaking with) can be found across cases. However, these case studies show that the exercise of representing waterways within what are still settler colonial state institutions and processes, has pushed the limits of what felt possible under those institutions, kindling the re-imagining of representation in practice. Speaking with the waterways is relational, intimate, and placed-based. These characteristics, we argue, are what distinguish speaking about and for as forms of representation.

In this section, we illustrate how relationality is understood and materialized; we offer a reflection on how speaking with waterways necessitates a place-based approach where there is no room for universalizations of the meaning and practice of the representation of Natural entities; and finally we emphasize the idiosyncrasies and challenges that have so far emerged in performing these forms of representation.
5.1 Relational representation of waterways

In each case, there is evidence of elements of a more relational way of understanding and performing representation. This relationality can be observed in the emergence of new forms of horizontal dialogue and collaboration amongst communities who have traditionally worked in silos. For example, even within the umbrella of settler-colonial states, we can observe dialogues between Indigenous and settler knowledges and an emerging emphasis on knowledge co-production. By enabling different actors to relate to and speak with these water bodies, and because rivers and lagoons must be understood holistically as living entities and/or legal subjects, the representation process kindles new relationships between actors that had traditionally not spoken to each other. Land and water managers are brought into relation through their mutual relations with the waterway and its representatives.

For instance, in the case of the Mar Menor, the scientific committee is expected to be in continuous dialogue with the monitoring committee, composed of citizens representing different parts of the lagoon’s basin and different sectors of society. What is more, the functions that correspond to the Tutoría del Mar Menor, the overarching decision-making body for the lagoon, are exercised jointly by the delegate representatives of the committee of representatives, the monitoring committee, and the scientific committee (see, Proyecto de Real Decreto de desarrollo de la Ley 19/2022, which is still awaiting final approval). In the Birrarung/Yarra River case, interviewees report that the establishment of the Birrarung Council has eased communication and collaboration between Melbourne Water and the local government authorities in the river basin. In the Atrato River, the action plans were the result of collaboration between several ministries (such as the Ministry of Environment, Ministry of Agriculture and Rural Development, and Ministry of Interior), scientists and specialists from the Instituto de Investigaciones Ambientales del Pacífico, Academia, Regional Corporations (Chocó and Antioquia), Civil Society, and other actors (Plan de Acción de la Orden Séptima). In each case, we can also begin to observe a dialogue not just between people, but also between knowledge systems.

This relational mode of representation is also supporting inter-institutional cooperation. For instance, in the Atrato River, interviewees reveal that the need to implement the court ruling has stirred inter-ministerial dialogue and cooperation in areas where before they operated in silos. In the Birrarung River, the Yarra
Implementation Plan mandates that RPEs (Responsible Public Entities) ‘will collaborate in delivering the Yarra Strategic Plan (YSP) actions and priority projects where they relate to their remit and function’ (55).

What is more, representatives are able to connect vertically across governance levels, linking high and lower instances of governance with each other, and with the bodies of water themselves. These new forms of representation are enabling a wide range of actors and civil society to access levels of government to which they had limited access before. For instance, in the case of the Atrato River, the river guardians who represent communities along the river basin, hold meetings with the Ministry of Environment every six months; a level of access to higher instances that was previously unthinkable. Similarly, the Birrarung Council remains in direct contact with the Minister of Water, and the Victorian Parliament, through a yearly reporting system. The Mar Menor regional offices, such as the Oficina Técnica del Mar Menor, are in direct report with the Ministry for the Ecological Transition and Demographic Challenge (MITECO by its Spanish acronym) elevating local voices to the highest instances of governance. This rich, multi-layered, relational representation is enabling multiple forms of dialogue, exchange, and relationship building, with the waterway at the centre.

But the differences in representation with respect to previous ways in which representation was envisioned and actualized go beyond changes in institutional collaboration and access. There is no denying that regardless of efforts to make the process inclusive, representation will always be a limited reproduction of the entity represented, hence it is crucial to pay particular attention to what may be left unrepresented (56). A relational form of representation rejects sameness and contests the homogenization and universalization of civic life and the understanding of what is the “general good”. Such reckoning enables the inclusion of voices that had been historically neglected in environmental planning processes to have a voice at the decision-making table. For instance, in the case of the Mar Menor, in considering which the stakeholders would form the monitoring commission (Comisión de Seguimiento) it was established that members (or guardians, as the legislation calls them) would need to not only represent the lagoon’s basin geographically, but also acknowledge diversity in the citizens’ concerns and viewpoints regarding the lagoon. Hence, the legislation includes the participation of representatives from a great variety of backgrounds ranging from unions, to gender equality organizations, to fishing groups, amongst others (Proyecto de real decreto de desarrollo de la ley 19/2022, art 7). In the Atrato case, the Action Plan derived from the court’s fifth order
(Plan de Acción de la orden 5) also included a great variety of stakeholders, acknowledging the importance of territorial representation as well as the inclusion of other related actors including Afro-Colombian communities, resguardos indígenas [Indigenous reservations], representatives of comunidades campesinas [local communities], mestizos, mulattos, fishermen in the area and other related communities even beyond those pointed at in the court ruling (Plan de Acción Orden Quinta, F-E-SIG-26-V3). In the case of the Birrarung River, there is also a clear acknowledgement of the plurality existing within First Nations. The Birrarung Council ‘walking together’ statement includes an acknowledgement of the Wurundjeri Woi-Wurrung as the peoples of the river, and the Bunurong as the people of the river mouth. Although initially only Wurundjeri Woi-wurrung were included in the Birrarung Council, both are now represented, enabling the contribution of knowledges from different parts of the river and that represent different cultures, laws, and experiences.

In none of the cases is the “guardian” one person, but rather a plurality of perspectives and the result horizontal and vertical collaboration and dialogue. In sum, this form of relational representation reflects the role of the representative as a plurality of voices that relate differently to the waterways and that together work out forms of representation in consensus when speaking sometimes for, but most often with, the waterways.

5.2 Representation as intimate and place-based

Rather than recognising the rights of Nature as a whole, each of these case studies focuses on a specific waterway, such as a lagoon or a river. The task of representing the waterway entity is thus specific to the named waterway, acknowledging the embodied history of relationships between the waterway and the world around it, including relationships with humans. This place-based identity shapes the way the representatives undertake their task. All four case studies, to varying degrees, evidence an interest in speaking with the waterways, not merely speaking for them. This is made possible by the closeness of the relationship between the representatives and the waterways. Rather than emphasising the collation of ‘objective’ facts about the waterways (or even, as Mansbridge advocates, taking a gyroscopic look at the representee) that could enable a determination of what is in their ‘best’ interests, the place-based approach centres and strengthens the relationship between the representatives and the waterway. Effective representation is enabled through
intimacy with the context, geography, ecology, hydrology, and culture(s) of the waterway and the people who live in and near it. This closeness allows for the representatives to speak with and through an entity that can express itself in many ways but not through human language.

In these case studies, representation is shaped by the representatives’ closeness to the waterway entity, geographically and otherwise. For instance, in the Atrato River case, the initial court ruling requested that two representatives be named, one on behalf of the government and one of behalf of the communities. However, this single community representative became 14 guardians/representatives as a result of a participatory process (the first inter-institutional and community meeting of Guardians of Atrato, held in Quibdo in 2017) that determined that the geography of the river is so vast and varied, from the mountains to the sea, that one sole local representative could not make justice for the River. These 14 representatives come from seven ethnic authorities and community organizations along the river basin. Together with those 14 representatives, the Ministry of Environment and Sustainable Development was co-designated as the other representative on behalf of the government (Decree 1148 2017, Art 1). Similarly, the Mar Menor body of representatives includes a member from each basin municipality, rather than a single representative for the entire basin. In Te Awa Tupua/Whanganui River, Te Kōpuka is comprised of iwi with interests in Te Awa Tupua (via Te Ripo), the mayors of three district councils, government agencies (Fish and Game and Department of Conservation), Genesis Energy, and four people representing tourism, environmental, recreation and primary industry interests. This blend of geographic representation as well as sectoral representation ensures inclusion of many different relationships with the river. Finally, the Birrarung Council also requires a combination of Traditional Owners, interest groups (community, environmental, and agricultural), and specific skills (such as aquatic ecology, landscape architecture, and urban planning, see Birrarung Act section 49(2)). None of the cases are contingent on establishing the ‘objective facts’ relating to the waterway and its health in order to enable effective representation. Instead, they prioritise the multiple relationships and ways of knowing the waterway, supporting dialogues between knowledges, between people, and with the waterway.

Understanding representation as intimate and place based has also challenged procedural notions of what representation should look like under the standard model. Across the case studies, elements of place are inserted in the way representation is envisioned and performed. For instance, in the case of the Birrarung...
River, decision-making processes are moulded for representations to be more attuned to place. The river must be present, either physically or virtually during meetings of the Birrarung Council. Dialogues in the Council are organized to allow for the Elders to speak first, and yarning circles led by Elders have become part of the representation of the river. In the case of the Atrato River, the action plans proposed the opening of specific physical spaces of engagement geared towards women, acknowledging that the design of traditional forums where men and women are simultaneously present is not conducive to women’s free participation.

The institutionalization of representation finds ways for cultural expression and embeddedness in the social, political and legal context that contribute to a reciprocal relationship between the representative and the community and further legitimize the representative’s role. For instance, in the Atrato River case, the court ruling implementation included a campaign called “Todos y todas somos Guardianes del Atrato” (we are all guardians of the Atrato river). Through the use of coplas [couplets], alabaos [traditional songs], and poems the campaign aimed at the community’s appropriation of the role of Guardians, a role that is not exclusive to the Collegiate Body (57). What is more, the action plans highlight the importance of ancestral knowledge and traditional ways of relating to the river and identify particular places with traditional and spiritual value. Biocultural rights take the centre stage in this new approach. In the case of the Birrarung River, there is a particular emphasis on learning from and adopting the ways in which First Nations have cared for country for millennia. Dialogues in the Council are organized to allow for the Elders to speak first, and yarning circles, which include smoking ceremonies and are led by Elders, have become part of the representation of the river.

The Te Awa Tupua legal framework supporting and enabling its representation amongst other things is referred to as Te Pā Auroa nā Te Awa Tupua. This means 'the broad eel weir built to withstand the autumn, winter and spring floods', symbolizing an extensive, well-constructed framework that ‘represents a comprehensive and resilient structure [that] symbolises our collective responsibility and commitment to this endeavour’ (9). Freshwater eels are of great significance to Maori culturally, and historically, as a source of subsistence, and treasured caretaker of waterways. What is more, in the case of the Mar Menor, a collaboration between artists and scientists was born to depict the ‘signature’ of the Mar Menor. In their words, such stroke, which represents the lagoons currents, was ‘a poetic way of claiming that the sea is alive
and can be protected if we give it the rights to do so’ (Joan Quirós in 58). A signature also carries great
significance in the civil law system of Spain.

5.3 Materializing enabling forms of representing waterways

To fully realize the representation of waterways, many of the challenges and needs are akin to those faced
by other forms of representation: the need for resources, economic and otherwise; being granted a real
(powerful) voice in the political arena; and proper channels and processes to realize the expected functions
of a representative. Beyond these, the enabling forms of representation that become part of the spectrum
of representation for waterways, also wrestle with distinctive practicalities.

Firstly, waterways are being recognised on human terms as a legal person/subject or living entity. Thus, the
performance of representation is already constrained by the anthropocentric system in which it is operating
(59). Within this system, the waterway entity often, and simultaneously, continues to be treated as a resource
(a legal object) and the rules and regulations governing it are often disconnected from the specific powers
of the representative. For instance, in none of the case studies do the representatives have the ability to
directly affect water resource management, and the waterway entities have no rights to the water that defines
their identities. This issue is compounded by one of scale: too often, national or state laws and policies
define outcomes for a waterway, and there may be little that local or regional representative bodies can do
to alter them (see also 26). This can set in the representatives and their functions up for failure. For instance,
when crafting implementation plans that consider the rights of the River, representatives may advocate for
a water pollution monitoring system that safeguards ecosystem as well as human health. However, water
quality regulations are usually established at the national level and may not be modifiable, curtailing the
exercise of representation.

What is more, because the representation of waterways reflects a dynamic relationship, and must be
responsive to changes in the waterway entity over time, it requires a flexible governance structure. However,
this way of operating can generate frictions in a legal system that only looks at the implementation of a firm
court ruling that took place at a point in time. For instance, the Atrato River case court ruling established a
series of requirements that multiple interviewees (from the ministerial level to the local level, including
community representatives) consider to be unattainable in the pre-established time frame given the
idiosyncrasies of politics and place.
What is more, giving voice to waterways through a multiplicity of actors or guardians complicates the issue
of accountability to ‘limit(s) the inherent hazards of political subjection’ (60). Such accountability is key to
ensuring that representatives are liable for their actions in the exercise of their powers, and sanctionable for
the acts performed (60). When representatives are both speaking for and with the waterway, but also
simultaneously representing other interest groups, to whom are they ultimately accountable? For example,
the Birrarung Council must include members who are also representatives of environmental and agricultural
groups (Birrarung Act, section 49). Te Kōpuka must include representatives of interests in tourism,
environment, recreation and primary industries (Te Awa Tupua Act, section 32). In Mar Menor,
representatives of fishing, private sector, and local interests, as well as community leaders are included in
the commissions. The Atrato River case is no different, as the 14 river guardians come from different
geographical areas of the river, and who also continue in their roles as local leaders and workers as the

guardian positions are not remunerated.

Relational representation of waterways complicates this further. How can the actions of the representative
be interrogated when they are based on relational closeness but not necessarily ‘objective facts’?
Representation of waterways should be accompanied by measures of process and outcome that enable the
actions of the representatives to be assessed and held to account for the efficacy of their representation.
The adoption of knowledge co-production procedures is increasingly enabling these processes, although
not without friction. These representatives, in giving voice to the waterway, and in enabling others to build
their own relationships with the waterway, can be immensely powerful in shaping the future health and
wellbeing of the waterway.

In sum, representing waterways offers new opportunities for relational and place-based representation, but
these may also find challenges within the legal and political systems in which they are created.
6 Conclusion

In this paper, we have developed a model of relational representation for Nature, by analysing four case studies of waterways that have been recognised as legal or living entities. We show how the exercise of representation for the waterway entity in these case studies expands traditional models of representation. Representation in these cases is exercised within a spectrum of representation that moves from speaking about these waterways towards speaking for and with, and ultimately, enabling dialogues with the waterway.

We argue that undertaking this exercise both timely and important, as the recognition of the rights of natural entities is increasingly expanding across jurisdictions, and there is no real clarity or consensus on what representation is intended to achieve, what it should look like, or how it should operate. This paper expands the theoretical grounds regarding the notion of representation, and by grounding this in four case studies, we show how these theoretical foundations can operate in a myriad of ways in reality. Representation has always been an ever-evolving concept, adapted to its times and to the legal and contextual needs. The representation of Nature, and waterways in particular, is no different. It offers an opportunity to expand and reimagine what representation can mean and how its imaginary can be materialized.

The relational representation model is place-based and intimate, reflecting the dynamic, constantly renegotiated relationship between Nature and the representatives. We demonstrate a shift away from the paternalistic model of speaking for Nature, and instead, we show how a relational approach emphasises speaking with Nature. Importantly, we also show how this relational representation can enable dialogues in multiple ways. The waterway is in dialogue with its representatives, and this is an essential element of developing the required relational closeness and intimacy to enable expression of the waterway’s agency. The representatives are in dialogue with each other, each learning and sharing knowledge and perspectives on the waterway based on their own relationships with it. Further, dialogues between knowledge systems become possible, as the multiple ways of knowing the waterway require representatives to weave these knowledges together to create a holistic understanding of the waterway. In doing all this, the representatives bring other members of the community into their own relationships with the waterway. In the case of Te Awa Tupua/Whanganui River, Te Kawa Tuatahi [the first Kawa] acknowledges that ‘Ko te Awa te Mātāpuna o te Ora [the river is the source of physical and spiritual sustenance], which is interpreted to...
mean that ‘all communities of the River share an emotional attachment with the River [and this] connection
drives our duty of care toward the River’ (9). What is more, representation becomes more attuned to place,
both through a more granular characterization of who needs to have a seat at the table given the
complexities of geography and place; and through the recognition and uplifting of cultural values and
decision making processes that are akin to place.

As more natural entities gain recognition as legal/living entities, there is the possibility and opportunity for
dialogue between natural entities. The isolated nature of most legal/living entities so far has limited this
possibility to date, but there are commitments to recognise all waterways in Victoria as living entities
(Targeted outcome 1, 61), and in Bangladesh, all rivers are currently recognised as legal and living persons
(62), creating the opportunity to support dialogue between river persons. A recent example of this is the
relationship between the Birrarung/Yarra River and the Burramatta/Parramatta River. In 2022, water from
the Birrarung was introduced to the Burramatta River, as the opening of a dialogue between rivers at the
Sydney Biennale. In 2023, water from the Burramatta River was then introduced to the Birrarung, bringing
the rivers into conversation. This was directly facilitated by the Birrarung Council (whose members
physically transported the water) and Wurundjeri Woi-Wurrung as Traditional Owners, but also reflects the
ongoing conversation between these rivers through their mutual connection to the ocean. Each provides
habitat for migratory eel species, whose populations may mingle in the Coral Sea before returning to the
rivers of their birth.

The relational model of representation faces the usual challenges of other forms of representation, but also
unique issues relating to the multiple, intersecting responsibilities of representatives, and the difficulties of
holding them to account. Establishing and supporting a dynamic, place-based, relationship driven process
within systems of governance that favour stability and are tied to historical precedent is likewise challenging.

The blossoming of the rights of Nature across the world could be transformative in repairing the
relationship between people and Nature, but achieving this lofty goal requires clarity in what we hope to
achieve in representing Nature within human systems. We see the relational model of representation widely
reflected in the representative models for Nature, even though there is significant diversity in the precise
form and composition of these entities and their representatives. As more cases arise, we hope that in
recognising the common thread of relationality, and showcasing the importance of the place-based nature of representation in contrast with a one-size-fits-all approach, we can more effectively inform the creation of future representation arrangements that go beyond the standard model. Re-imagining representation in these terms will allow for a more pertinent design of institutions, will enable processes that hold Nature's representatives to account, and will allow for the design of decision making processes that are more in tune with Nature and its inhabiting communities.

7 References


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