Nature as an owner: the next step in environmental protection?

Anne de Vries, Tilburg University
Ilon Van Ham, Radboud University of Nijmegen
Kees Bastmeijer, Tilburg University
Western (liberal) view on nature

“The earth and all that is therein is given to men for the support and comfort of their being” (John Locke, 1690)
Nature protection through property rights?

- De Vries-Stotijn, Van Ham, Bastmeijer, Protection through property From private to river-held rights, Water International 2019(44), P. 736-751

- **The Netherlands: Natuurmonumenten**
  - Society with over 719,000 members
  - Owning 101,066 hectares (363 areas)

- **New Zealand: Queens Elisabeth II Trust**
  - Network of private owned properties
  - More than 182,000 ha (4503 covenants)
  - Semi-public supervision by trust
<table>
<thead>
<tr>
<th><strong>Pros</strong></th>
<th><strong>Cons</strong></th>
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<td>Independent from states</td>
<td>Voluntary</td>
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<td>Long term protection possible</td>
<td>Monitoring and supervision</td>
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<td>Increasing popularity</td>
<td>Lack of specialized knowledge</td>
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<td>Additional to public environmental law</td>
<td>Less suitable for areas owned by many different owners</td>
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<td>Limits public expenses</td>
<td>Legal limitations (e.g. no main positive duties via Dutch easement; res nullius)</td>
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<td>States become lazy?</td>
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Whanganui River:
A legal person owning the river
• S 12: “Te Awa Tupua is “an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements.”

• S 14: “Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person.”

• The river acts and speaks through a representative body, Te Pou Tupua (S 19(d))
Effects

• Transfer of crown-owned parts to Te Awa Tupua (S. 40-41)
• Cannot be allianated (S. 43)
• River liable as owner (S. 56 & Schedule 5)
• Tax (S. 25)
Limitations

• The Act does not limit existing private property rights or public use (S. 16 & 46)

• Private owned parts can be transferred and vested in Te Awa Tupua only with full consent of the private owner (S. 48-49)

• Water cannot be owned
**Pros**

- Strong signal, nature gets “own” voice
- Shift in thinking about human-nature relationship
- Legal standing
- Independent from the whims of politics
- River-owned parts cannot be allianated

**Cons**

- Still human-made, can be taken away again
- Private ownership is unaffected
- Water cannot be owned
- Practical?
- Equally expensive for states
The future

- Better alternative to no ownership
- Legal personality for animals?