Towards a Loraxian Praxis: Lessons from Legal History, Lake Erie, and *The Lorax*

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I. INTRODUCTION

> "You're glumping the pond where the Humming-Fish hummed!
> No more can they hum, for their gills are all gummed.
> So I'm sending them off. Oh, their future is dreary.
> They'll walk on their fins and get woefully weary
> in search of some water that isn't so smeary.
> I hear things are just as bad up in Lake Erie."
> —*The Lorax*, 1971 [1]

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In 1971, Lake Erie was so polluted that Theodor S. Geisel, a.k.a. Dr. Suess, referenced the lake to convey the toxic consequences of resource exploitation to readers of his children's book, *The Lorax*.[2] *The Lorax* tells the story of an avaricious entrepreneur called the Once-ler who sets up an industrial operation in a Suessian environment that involves toppling Truffula trees, starving the Bar-ba-loots, choking the Swomee swans, glumping up the Hummingfish pond, and ignoring the pleas of the Lorax on behalf of the trees and their community.[3] However, in 1986, at the request of two graduate students at The Ohio State University,[4] Geisel removed the line about Lake Erie in recognition of the "great civic and scientific effort" that had transformed the lake into "the happy home of smiling fish."[5] Despite this removal, by 2014, however, those fish were floating belly-up and the "glump" was getting in the drinking water of nearby human residents.[6] Chemical fertilizers from nearby agricultural operations had inundated the lake with phosphorus, resulting in the growth of a toxic algae capable of causing liver and kidney damage to living creatures that ingest the toxin.[7]

With no Lorax to speak for the Lake, residents of Toledo, Ohio, took it upon themselves to give Erie a voice—in 2018, a citizen-led effort called Toledoans

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especially Jamie Feyko, Raegan Hudson, and Nicholas Sgroi. Finally, thank you to my parents for instilling a love of reading in me as a child so that I could meet characters like the Lorax and all his friends. All errors are my own.

[1] DR. SUESS, THE LORAX 47 (1st ed. 1971).

[2] *See generally id.*

[3] *See generally* DR. SUESS, THE LORAX (2nd ed. 1999). *The Lorax* begins in a barren present world where "the wind smells slow-and-sour when it blows and no birds ever sing excepting old crows." *Id.* at 1. The story is narrated by the Once-ler who explains how the fictional world came to an unidentified audience member referred to as "you." *Id.* at 9. The Once-ler's tale begins "a long, long time back" when the Once-ler first happens upon a forest featuring Truffula trees, a pond, and creatures called Bar-ba-loots, Swomee swans, and Hummingfish. *Id.* at 10. The Once-ler develops a method to turn tufts from the Truffula trees into things called "thneeds" that the Once-ler insists "everyone needs!" *Id.* at 39, 49. However, after chopping down the first Truffula tree, a "sort of a man" emerges from the tree stump and identifies himself as the Lorax who "speak[s] for the trees." *Id.* at 20–23. The Once-ler dismisses the concerns of the Lorax and starts selling thneeds. *Id.* at 26. After the Once-ler topples the last tree, the Lorax leaves, and the Once-ler is left alone in a smoggy wasteland. *Id.* at 55. A cautionary tale in every sense of the phrase, the story ends with the Once-ler's warning: Unless you care about restoring the environment, nothing will get better. *Id.* at 58.

[4] Dr. Roseanne Fortner, *There's Nothing Smeary About Lake Erie Anymore*, OHIO SEA GRANT (Mar. 2, 2019), https://ohioseagrant.osu.edu/news/2019/abfir/lorax-lake-erie [https://perma.cc/23TK-ZR7B].

[5] Letter from Theodor S. Geisel, Author of *The Lorax*, to Claudia Melear & Margie Pless, Ohio Sea Grant Education Program, (Jan. 27, 1986) (on file with Ohio Sea Grant Education Program).

[6] Michael Wines, *Behind Toledo's Water Crisis, a Long-Troubled Lake Erie*, N.Y. TIMES (Aug. 4, 2014), https://www.nytimes.com/2014/08/05/us/lifting-ban-toledo-says-its-water-is-safe-to-drink-again.html [https://perma.cc/59U2-LG4N].

[7] *Id.*

for Safe Water collected enough signatures to place the Lake Erie Bill of Rights (LEBOR) on the ballot.[8] LEBOR stated Lake Erie and the Lake Erie watershed possessed "the right to exist, flourish, and naturally evolve,"[9] and the people of Toledo have the right to "a clean and healthy Lake Erie and Lake Erie ecosystem."[10] LEBOR gave any citizen in Toledo the right to sue on behalf of the Lake.[11] Toledo citizens voted to approve LEBOR in February 2019; however, the Lake was never allowed to take a breath, let alone speak.

A farming business immediately sued to invalidate LEBOR, and a federal judge blocked LEBOR from taking effect until the case was resolved.[12] The State of Ohio joined the farming business in the litigation, and only a year after its passage, the Northern District of Ohio invalidated LEBOR for being "unconstitutionally vague and [exceeding] the power of municipal government in Ohio."[13]

Laws like LEBOR are part of the Rights of Nature movement trending among environmentalists, scholars, and citizens—like Toledo residents—seeking to acknowledge the rights of natural entities.[14] As the invalidation of LEBOR indicates, there are still significant legal and conceptual barriers to the recognition and enforcement of natural entities' rights.[15] In theory, ecological personhood is not all that different from corporate personhood—so, why would a court likely dismiss the case of *The Lorax v. Once-ler* for lack of standing? This Note suggests the answer to this question requires more than the traditional constitutional law analysis and emphasizes the limits of the individualistic, adversarial American system to address the needs of a planet crying out for help.

In Part II of this Note, I will describe the background of the Rights of Nature movement, the guardianship approach to advocating for Nature that has emerged from it, and the limitations of that approach in an anthropocentric legal system. In Part III, I will draw upon rights theory discourse and international

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[8] Dana Zartner, *How Giving Legal Rights to Nature Could Help Reduce Toxic Algae Blooms in Lake Erie*, SALON (Sept. 15, 2019), https://www.salon.com/2019/09/15/how-giving-legal-rights-to-nature-could-help-reduce-toxic-algae-blooms-in-lake-erie_partner/ [https://perma.cc/KX2L-KVLL].

[9] TOLEDO, OHIO, MUN. CODE § 254(a) (2019), *invalidated by* Drewes Farms P'ship v. City of Toledo, 441 F. Supp.3d 551 (N.D. Ohio 2020).

[10] TOLEDO, OHIO, MUN. CODE § 254(b).

[11] TOLEDO, OHIO, MUN. CODE § 256(b), (d).

[12] Zartner, *supra* note 8.

[13] Drewes Farms P'ship v. City of Toledo, 441 F. Supp.3d 551, 554, 556, 558 (N.D. Ohio 2020). Specifically, on the unconstitutionally vague point, the court reasoned that LEBOR's "line between clean and unclean, and between healthy and unhealthy, depends on who you ask." *Id.* at 556. Further, on the right to local self-government point, the court noted that Lake Erie exceed Toledo's borders, so "[that] means the Lake's health falls well outside the City's constitutional right to local self-government, which encompasses only 'the government and administration of the internal affairs of the municipality.'" *Id.* at 557.

[14] *See, e.g.*, Oliver A. Houck, *Noah's Second Voyage: The Rights of Nature as Law*, 31 TUL. ENV'T. L.J. 1, 2–9 (2017).

[15] *Id.* at 20–22.

Rights of Nature legislation to illustrate how rights can be abundantly re-imagined to honor and protect ecological communities.

In Part IV, I will propose a novel approach to Rights of Nature advocacy and analysis that I refer to as a "Loraxian praxis." To define this Loraxian praxis, I will combine the call to action in the story of *The Lorax* with shifts in scientific and philosophical thinking. I will illustrate how this Loraxian praxis functions by imagining how it would have applied in the case of LEBOR if the key players involved would have done what a Loraxian praxis demands: "care[] a whole awful lot."[16] In Part V, I will conclude by arguing that unless our care for the rights of nature becomes bound in our care for our whole awful human lot, "nothing is going to get better. It's not."[17]

II. BACKSTORY OF RIGHTS OF NATURE THEORY

Before diving into the theoretical limitations that sunk LEBOR, I will discuss the conceptual roots of the Rights of Nature movement. First, I will discuss the impetus for Rights of Nature theory as the desire to push the environment past the standing threshold courts impose to limit litigation. Then, I will analyze the Rights of Nature theory that Christopher Stone first articulated, and highlight the tension between man and nature inherent in Stone's guardianship approach. Finally, I will provide an example of how Stone's approach in the modern U.S. legal system makes evident the conflict between Rights of Nature scholarship, legislation, and judicial interpretation.

A. *The Standing Requirement*

The origins of the standing test are controversial; some scholars argue for a traditional view that standing is derived from the language of the Constitution,[18] while others theorize the standing doctrine was "'invented' a century and a half after the Constitution was written."[19] While the origin of the standing analysis remains an open question, the requirements of the test itself are straightforward: a tripartite inquiry into the injury, causation, and redressability of a litigant's claim.[20] Because the environment itself does not possess legally-protected interests capable of injury, it can never pass the first prong of the test. In order for the environment to have standing in federal court, as well as in many state

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[16] DR. SUESS, *supra* note 3, at 58.

[17] *Id.*

[18] *See generally* Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U. L. REV. 881 (1983).

[19] Daniel E. Ho & Erica L. Ross, *Did Liberal Justices Invent the Standing Doctrine? An Empirical Study of the Evolution of Standing, 1921-2006*, 62 STAN. L. REV. 591, 599 (2010); *see also* Cass R. Sunstein, *What's Standing After* Lujan*? Of Citizen Suits, "Injuries," and Article III*, 91 MICH. L. REV. 163, 166 (1992).

[20] Steven L. Winter, *The Metaphor of Standing and the Problem of Self-Governance*, 40 STAN. L. REV. 1371, 1389 (1988).

courts,[21] lawmakers must first recognize the legally-protected interests of the environment—thus, the Rights of Nature theory emerged.

B. *Rights of Nature Theory in Scholarship*

The Rights of Nature movement began gaining conceptual traction in the early 1970s through judicial decisions and articles that posed paradigm-shifting questions about the legal rights of entities traditionally understood as right-less "things."[22] While this early movement critically examined the traditional human inability to take serious arguments in favor of giving rights to "natural objects," these critiques proved insufficient for establishing a constitutionally cognizable basis for recognizing the legal rights of nature and allowing natural objects a voice in court.

A year after the Lorax first spoke for the trees in Seussian prose in 1971, Christopher Stone posed a follow-up question: If trees can be harmed by humans expanding, should those same trees possess legal standing? While acknowledging the difficulty of how a natural object would represent itself, Stone points out that many legal "persons" lack a voice, such as corporations and states.[23] Thus, Stone answers his query in the affirmative and lays out what first appears to be a Lorax-like system of representation: the guardianship approach.

Stone suggests à la Lorax that courts ought to allow human friends of nature to apply for guardianships whereby the guardian could raise the claims of the natural object in the natural object's name and appear on behalf of the natural object in formal legal proceedings.[24] If the law recognized natural objects as legal entities, courts would then have to factor the fragmented, more causally attenuated costs of human actions to the environment into their cost-benefit analyses.[25]

Thus, in the Loraxian case of *Hummingfish Pond v. Once-ler* where Plaintiff-Hummingfish would seek an injunction of the Once-ler's thneed factory development, the court would consider not only the cost of the thneed factory to the trees, but also the downstream costs of the glumped-up pond, the sickened Swomee-Swan populations, and the diminished Hummingfish catch.[26]

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[21] Wyatt Sassman, *A Survey of Constitutional Standing in State Courts*, 8 KY. EQUINE, AGRIC. & NAT. RESOURCES L. 349, 352–53 (2015).

[22] *See generally* Christopher D. Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972).

[23] *Id.* at 464.

[24] *Id.* at 466.

[25] *See id.* at 480–81.

[26] *See id.* at 475. *But see* Hope M. Babcock, *A Brook with Legal Rights: The Rights of Nature in Court*, 43 ECOLOGY L.Q. 1, 49–50 (2016); Matthew Miller, *Environmental Personhood and Standing for Nature: Examining the Colorado River Case*, 17 U.N.H. L. REV. 355, 375–76 (2019).

Stone's guardianship approach seems, at first glance, to attempt to bridge the gap between man and his natural surroundings by charging human guardians to take up the interests of natural objects and bring them into the courtroom. However, this approach reinforces the conceptual notion that the interests of human and nature are fundamentally distinct. The guardian represents the natural object, not because his rights are necessarily bound up in the treatment of the natural object, but because the guardian benevolently cares about the protection of the natural object's rights. Thus, the guardian approach further entrenches the divide between man and nature. This divisive thinking leads to an "us vs. what" mentality that asks in every conversation about extending protections to environmental whats, what is it going to cost *us*?

C. *Reactions to Rights of Nature Theory*

LEBOR was neither the first legislative attempt to confer rights upon natural objects, nor the first to be struck down or deemed as toothless as a Hummingfish. In this subpart, I will walk through an example of a similar attempt to provide rights to natural objects to illustrate a common thread between their failures—the anthropocentric and individualistic lens through which legislators, judges, and even environmental advocates often regard the environment.

In *Colorado River Ecosystem v. State of Colorado*,[27] the legal system slammed the courtroom doors shut on the distressed river system at the request of the plaintiff's own guardian. The river ecosystem attempted to sue the State for violating its "right to exist, flourish, regenerate, be restored, and naturally evolve," alleging the State had polluted the river system and harmed the species who call the river home.[28] The guardian-lawyer representing the River tried to introduce new substantive rights for the river system to convince the court to recognize the legitimacy of the Rights of Nature doctrine.[29] In their initial complaint, the plaintiff focused on arguing for the river system's "environmental personhood," which if recognized, would allow the plaintiff to establish standing based on the theory that the State violated the river's constitutional rights.[30] The plaintiff then submitted an amended complaint with more specific counts against the State, invoking the First Amendment, procedural due process, equal protection, and the Fourteenth Amendment rights of the river.[31]

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[27] Colo. River Ecosystem v. Colorado, No. 17-cv-02316-NYW, 2017 WL 4699840 (D. Colo. Dec. 1, 2017).

[28] Julie Turkewitz, *Corporations Have Rights. Why Shouldn't Rivers?*, N.Y. TIMES (Sept. 26, 2017), https://www.nytimes.com/2017/09/26/us/does-the-colorado-river-have-rights-a-lawsuit-seeks-to-declare-it-a-person.html [https://perma.cc/Z3YW-5B2H].

[29] *See* Miller, *supra* note 26, at 373.

[30] *Id.* at 368.

[31] *Id.* at 369–72.

Scholars aware of the court's disapproval of such theories met the plaintiff's amended complaint with skepticism,[32] politicians who viewed the case as merely obstructionist met the complaint with backlash,[33] and the State met the complaint with fierce critique for its failure to establish standing.[34] The state Attorney General's office threatened the guardian-lawyer with sanctions under Fed. R. Civ. P. 11(c) if he did not withdraw the complaint with prejudice.[35] One scholar commenting on the case, Matthew Miller, called the plaintiff's amended complaint a "Rights of Nature manifesto" that failed to establish standing for the river on every count due to faulty legal arguments.[36]

The visceral reaction from powerful opponents of extending rights illustrates another issue with Stone's guardianship approach. Even if a guardian has the gumption to bring forth a claim on behalf of its environmental ward, threats and alienation from the legal community may chill the guardian's efforts. Accordingly, with his legal reputation and license on the line, the *Colorado River* lawyer dropped the suit. Though the lawyer's desire to stick up for the river system was genuine,[37] *his* rights were not bound up in the rights of the river, thus, when forced to weigh personal costs against uncertain benefits to the river system, the river came up short.[38]

When people conceptualize the rights of natural objects as separate and distinct from human rights, such as in the guardianship approach, humans opposed to the recognition of these rights can exert punitive and societal pressure onto the human guardian until the guardian abandons their post. One could argue the solution to this issue is to appoint guardians who are willing and capable of resisting pressures—but with each loss like *Colorado River*, the illegitimacy of the Rights of Nature theory is further entrenched in public thought, and the bill for its advocacy grows ever more costly.[39] Just think—if you were a Lorax-minded lawyer and the AG threatened sanctioning you, ask yourself, dear reader, what would you do?

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[32] Turkewitz, *supra* note 28.

[33] *Id.*

[34] *See* Defendants' Motion to Dismiss, Colo. River Ecosystem v. Colorado, No. 17-cv-02316-NYW, 2017 WL 4699840 (D. Colo. Dec. 1, 2017),; Miller, *supra* note 26, at 369–70.

[35] Letter from Scott Steinbrecher, Senior Assistant Attorney General, Colo. Dep't of L., to Jason Flores-Williams (Nov. 16, 2017), https://s3.documentcloud.org/documents/4320639/AG-s-Letter-to-Flores-Williams-on-Rule-11.pdf [https://perma.cc/E4WS-YAE3].

[36] *See* Miller, *supra* note 26, at 373.

[37] *See* Lindsay Fendt, *Colorado River 'Personhood' Case Pulled by Proponents*, ASPEN JOURNALISM (Dec. 5, 2017), https://www.aspenjournalism.org/colorado-river-personhood-case-pulled-by-proponents/ [https://perma.cc/MF74-DYR3].

[38] *See id.*

[39] *Critical Perspectives on Rights*, BRIDGE https://cyber.harvard.edu/bridge/CriticalTheory/rights.htm [https://perma.cc/ZA6K-MTL2].

III. RIGHTS OF NATURE RE-IMAGINED

Christopher Stone published *Should Trees Have Standing?* almost fifty years ago, and since then, the long-term costs of environmental harm today have become more possible to measure and known to the public. Yet, the Rights of Nature theory continues to flounder in the American legal system.[40]

This floundering would not surprise Christopher Stone. Unless, as Stone suggests in his piece, humans "give up some psychic investment in our sense of separateness and specialness in the universe[,]" humanity will not be able to depart from the view that nature is a mere collection of "senseless objects."[41] Stone's assertion is a drastic move from the practical legal argument Stone advanced in his description of the guardianship approach. Stone is proposing a conception of rights that are conferred not on discrete individuals, but instead on collectives to confront the crises of a "global organism."[42] The question remains: How do we get there?

Taking a step back from the narrow focus of the Rights of Nature, in this Part, I will attempt to provide working definitions for individual and collective rights. Then, I will describe how individual rights and collective rights can coexist within a single legal framework by discussing a comparative international example.[43]

A. *Individual Rights*

The concept of individual rights traces back to ancient philosophy, though these ancient rights bear little resemblance to modern legal rights.[44] Out of the French and American revolutions emerged the concept of "inalienable rights"—positive individual rights belonging to individuals by virtue of birth.[45] Americans declared these rights as "self-evident"; however, they were new to the American consciousness at the time of their announcement.[46]

Critics of the ongoing rights discourse have impugned it for the adversarial individualism it enables, and people often invoke these inherent rights in order

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[40] *See* Houck, *supra* note 14, at 21–22.

[41] Stone, *supra* note 22, at 496.

[42] *Id.* at 500.

[43] *See generally* Linda Te Aho, *Ruruku Whakatupua Te Mana o te Awa Tupua–Upholding the Mana of the Whanganui River*, MĀORI L. REV. (May 2014), https://maorilawreview.co.nz/2014/05/ruruku-whakatupua-te-mana-o-te-awa-tupua-upholding-the-mana-of-the-whanganui-river/ [perma.cc/7736-P7EJ].

[44] MIHNEA TANASESCU, ENVIRONMENT, POLITICAL REPRESENTATION, AND THE CHALLENGE OF RIGHTS 36 (2016).

[45] *Id.* at 37 ("[T]he right to resist oppression becomes fundamental, both in terms of the individual's own rights (positive rights), and that of the state (negative rights, that is an obligation not to oppress).") (citation omitted) (emphasis omitted).

[46] *Id.* at 41 ("If indeed it had been the case that these rights were self-evident, then there would have been no need for a declaration.").

to safeguard their personal interests.[47] Enmeshed in this individualism is the notion that individuals should act according to their own preferences, so long as their actions do not interfere with the interests of other individuals.[48] Thus, when acting in spaces where individuals endowed with rights presume other occupants of the space lack rights, rights discourse allows individuals to navigate within their zone of acceptable preference with "total arbitrary discretion to pursue their own ends without regard to the impact of their actions on others."[49]

For example, in *The Lorax*, the Once-ler engages in individualistic rights discourse when he justifies glumping up the Hummingfish pond by stating, "Well, I have my rights, sir, and I'm telling you I intend to go on doing just what I do! And, for your information, you Lorax, I'm figgering on biggering and Biggering and BIGGERING and BIGGERING!"[50] After he spoke his rights into being, the Once-ler used them to cloak his exploitative actions with a patina of legitimacy. Rights discourse allowed the Once-ler to reject the suffering of the songless Swomee Swans, the fruitless Bar-ba-loots, and the gummed-up Hummingfish because the Once-ler is not infringing upon others' rights, he is exercising his own.

Feminist and critical race theorists have challenged the argument against rights discourse, citing the potential to reconstruct rights in a manner that enshrines beings with respect and recognition.[51] Critical race scholar Patricia Williams speaks of the need to translate between the meaning of rights for the historically powerful and the historically disempowered. Conferring rights elevates entities to something higher than human, something more interconnected than the individual: the social being.[52] Potential social beings are not limited to humans, or even living things.[53] Thus, when people withhold rights, they cause harm to social beings who have never had the opportunity to speak their needs in the language of rights. Instead, Williams advocates that we collectively do something even more radical with rights:

> Instead, society must *give* them away. Unlock them from reification by giving them to slaves. Give them to trees. Give them to cows. Give them to history. Give them to rivers and rocks. Give to all of society's objects and untouchables the rights of privacy, integrity, and self-assertion; give them distance and

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[47] *Critical Perspectives on Rights*, *supra* note 39.

[48] *Id.*

[49] *Id.*

[50] DR. SUESS, *supra* note 3, at 49.

[51] *Critical Perspectives on Rights*, *supra* note 39 ("[Feminist and critical race scholars argue] rights can be defended and reconstructed; the critique of rights neglects the historical potential of rights in the real lives of people of color and women.").

[52] PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS 153 (1991) ("[For] the historically disempowered, the conferring of rights is symbolic of all the denied aspects of their humanity: rights imply a respect that places one in the referential range of self and others, that elevates one's status from human body to social being.").

[53] *Id.* at 160.

> respect. Flood them with the animating spirit that rights mythology fires in this country's most oppressed psyches, and wash away the shrouds of inanimate-object status, so that we may say not that we own gold but that a luminous golden spirit owns us.[54]

B. *Defining Collective Rights*

Collective rights acknowledge the social aspect of our beings. Martha Minow has argued that, if viewed as features of relationships, rights become a recognition of the responsibility of social beings to each other, and this recognition may help "reinvent legal activity with a believable aspiration to create communal meanings in a world scarred by justifiable skepticism."[55] Minow's emphasis on the relationality of rights suggests her reconstructed rights are a form of collective rights.

Scholars have articulated various theories of collective rights, particularly with reference to Indigenous groups who assert collective rights.[56] Allen Buchanan has defined two distinctive types of collective rights: strong-sense collective rights and dual-standing collective rights.[57] Strong-sense collective rights are rights that only a group can wield non-individually through a collective decision process or an agent can wield on behalf of the group.[58] Dual-standing collective rights are rights that any individual member of the group can wield, the collective can wield through collective decision-making, or an agent representative can wield on behalf of the group.[59]

A recent example from New Zealand illustrates how dual-standing collective rights operate in practice, which I discuss in the next subpart.

C. *"I am the river, and the river is me."*

On March 27, 2017, New Zealand enacted legislation that granted legal personhood to the Whanganui River, the ancestral river of the Māori people of the river, the Whanganui Iwi.[60] The Te Awa Tupua Act (also known as the Whanganui River Claims Settlement Act) enshrines the Whanganui with legal

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[54] *Id.* at 165.

[55] *Critical Perspectives on Rights*, *supra* note 39.

[56] *See, e.g.*, Allen Buchanan, *The Role of Collective Rights in the Theory of Indigenous Peoples' Rights*, 3 TRANSNAT'L L. & CONTEMP. PROBS. 89, 94–95 (1993); Cindy L. Holder & Jeff J. Corntassel, *Indigenous Peoples and Multicultural Citizenship: Bridging Collective and Individual Rights*, 24 HUM. RTS. Q. 126, 147 (2002).

[57] Buchanan, *supra* note 56, at 93–94.

[58] *Id.* at 93.

[59] *Id.* at 94.

[60] Dan Cheater, *I Am the River, and the River Is Me: Legal Personhood and Emerging Rights of Nature*, W. COAST ENV'T L. (Mar. 22, 2018), https://www.wcel.org/blog/i-am-river-and-river-me-legal-personhood-and-emerging-rights-nature [https://perma.cc/7CPU-5GDU].

personhood as a being called Te Awa Tupua.[61] The Act defines Te Awa Tupua as "an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements."[62] Te Awa Tupua holds the "rights, powers, duties, and liabilities of a legal person."[63] Additionally, the Act creates a two-person governing body, Te Pou Tupua, to "advise and support" Te Awa Tupua.[64] In a section of the Act labeled "Ko au te Awa, ko te Awa ko au" (which translates to "I am the river and the river is me"), the Act grants all members of the collective, known as the Whanganui Iwi, standing to sue on behalf of Te Awa Tupua.[65]

Thus, the Te Awa Tupua Act establishes a dual-standing, collective right legal framework with the collective encompassing the Whanganui Iwi and their kinship with the Whanganui River. Individual members of the Whanganui Iwi can bring suit if injury occurs to Te Awa Tupua, or the members of Te Pou Tupua can represent the interests of the River.[66] However, critically, Te Awa Tupua is by no means conceptualized as a voiceless entity in this framework; Te Awa Tupua is a social being with interests, relationships, and living agency to interact with the world.[67] The River's interests are coterminous with those of the Māori such that any action that causes harm to the River both legally and factually does harm to the Māori people. While no lawsuits have yet to be filed on behalf of Te Awa Tupua, New Zealanders have changed their treatment of the Whanganui, such as requesting its consent before embarking on projects that would impact the River.[68]

IV. MAKING KIN: A LORAXIAN PRAXIS

In this Part, I will argue that to act like the Lorax, we must trouble the traditional human identity. To define this "Loraxian praxis," I will perform a literary analysis of the call to action in *The Lorax* to care a whole awful lot for our collective communities.[69] I will suggest the kinship recognized by this Loraxian praxis is not a Suessical or legal fiction, but a philosophically—and scientifically—supported reality. Finally, I will consider a re-imagined challenge to LEBOR where the Court applies a Loraxian praxis that gives due recognition and respect to the kinship Toledoans share with Lake Erie.

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[61] Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, pt 2, subpt 2, cl 12 (N.Z.).

[62] *Id.*

[63] *Id.* at pt 2, subpt 2, cl 14.

[64] Cheater, *supra* note 60.

[65] Te Awa Tupua Act 2017, pt 3, subpt 2, cl 71–72.

[66] *Id.* at pt 2, subpt 3, cl 18–19.

[67] *Id.* at pt 2, subpt 2.

[68] Ashley Westerman, *Should Rivers Have Same Legal Rights as Humans? A Growing Number of Voices Say Yes*, NPR (Aug. 3, 2019), https://www.npr.org/2019/08/03/740604142/should-rivers-have-same-legal-rights-as-humans-a-growing-number-of-voices-say-ye [https://perma.cc/DV4S-BUEY].

[69] DR. SUESS, *supra* note 3, at 58.

A. *Make Like the Lorax*

After the Once-ler cuts down the last Truffula tree in *The Lorax*, the titular character departs and leaves a pile of rocks with the single word, "UNLESS."[70] The Once-ler tells the reader that since the Lorax left, and the Once-ler's thneed empire fell to ruin around him, he has worried what the word meant.[71] The arrival of "you," the reader and audience, provides the Once-ler with clarity and inspires him to deliver the oft-quoted lines: "UNLESS someone like you cares a whole awful lot, nothing is going to get better. It's not."[72] The Once-ler follows this insight by entrusting "you" with the last Truffula seed because, it turns out, it was not thneeds, but Truffula trees that everyone needs.[73] He instructs you to plant the seed, give it clean water and air, and protect it from axes that hack and then, maybe then, "the Lorax and all of his friends may come back."[74]

A Loraxian praxis is discernible from this conclusion. This Loraxian praxis will require a radical shift in the dominant modern Western understanding of the boundaries between human and environment that permeates our current social structures. The Once-ler perceives reality through the individualistic and exploitative lens reflective of American modernity. Because of this lens, the Once-ler misses the Truffula tree forest for the thneeds. His inability to interpret the Lorax's final message is indicative of the inability of people and systems that have internalized this individualistic mode of being to take up the Lorax's call. The logic of the Once-ler is what led to the Lorax and his friends leaving—it will not bring them back.

Rather, it is only upon the arrival of "you," the reader, who still possesses the potential for change, that the Once-ler can deliver the Lorax's message. The Lorax appeals to the reader, the subject of this "you," to take off the individualistic lenses that they have been handed through history, and instead take up a vision of reality motivated by care. This radical move is the substance of the Loraxian praxis and it is embedded in the call to "care a whole awful lot." This call may seem simple, even naïve, in the face of the grave responsibility the Lorax has given the reader. However, these words are the result of more than a need to stick to a rhyme scheme—the words "whole" and "awful" suggest an awareness of the magnitude and difficulty of the Lorax's call.

Whole, in its adjective form, means "comprising the full quantity, amount, extent, number, etc., without diminution or exception; entire, full, or total."[75] The amount of care necessary to make things better is all-encompassing,

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[70] *Id.* at 56.
[71] *Id.* at 57.
[72] *Id.* at 58.
[73] *Id.* at 61.
[74] *Id.*
[75] *Whole*, DICTIONARY.COM, https://www.dictionary.com/browse/whole?s=t [https://perma.cc/222V-SY2K].

imposing limits on what falls within the scope of this care would frustrate the effort.

Awful recognizes the hard and transcendent qualities of the requested expansive care with the dual negative and positive connotations invoked by the word.[76] As an adjective, awful can mean unpleasant.[77] However, writers and speakers also use awful, an adjective formed with the prefix "awe," as an invocation of the complex fear and awe of sublime experience.[78] An encounter with nature that troubles the conceptual and linguistic boundaries that humans steeped in modern Western thinking traditionally draw between themselves and their environments is characteristic of the "ecological sublime."[79] Encounters with the ecological sublime are humbling experiences that prompt "the realization that we are mortal creatures, 'beings of nature' whose lives are entirely dependent on forces greater than we are."[80]

Finally, the Once-ler's directions for this Loraxian praxis offers no guarantee of success. Even if the reader does everything the Once-ler says, the reader is only promised that their care "may" entice the Lorax and his friends to return. "May" expresses the possibility, but not the certainty of an outcome—the term is both hopeful and cautionary. A person who takes up a Loraxian praxis, then, is called to accept the uncertainty of success when engaging in her work. In true Lorax fashion, she must continue seeking recognition, respect, and care for her community even when mocked and ostracized for her advocacy because she knows her life depends on that community.

While adopting a Loraxian praxis may seem radical to humans still wearing their modern consumerist, Once-ler lenses, both contemporary science and philosophy suggest the Loraxian approach is closer to an accurate perception of reality.

B. *Making Kin to Change the Story*

Ecofeminist scholar Donna Haraway has articulated a version of this Loraxian praxis in her discussions of the need for new conceptual tools to address the challenges of the Anthropocene.[81] Haraway does this by suggesting

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[76] *See Awful*, DICTIONARY.COM, https://www.dictionary.com/browse/awful?s=t [https://perma.cc/8GPA-F2NQ].

[77] *Id.*

[78] Christopher Hitt, *Toward an Ecological Sublime*, 30 NEW LITERARY HIST. 603, 613 (1999).

[79] *See id.* at 615–17.

[80] *Id.* at 607; *see also* Berthold Schoene, *Arborealism, or Do Novels Do Trees?*, TEXTUAL PRAC. (Mar. 11, 2021), https://www-tandfonline-com.proxy.lib.ohio-state.edu/doi/full/10.1080/0950236X.2021.1900379 [https://perma.cc/GR5T-CU6E].

[81] Steve Paulson, *Making Kin: An Interview with Donna Haraway*, L.A. REV. BOOKS (Dec. 6, 2019), https://lareviewofbooks.org/article/making-kin-an-interview-with-donna-haraway/ [https://perma.cc/4J5Z-KP8D]. "The Anthropocene Epoch is an unofficial unit of geologic time, used to describe the most recent period in Earth's history when human activity started to have a significant impact on the planet's climate and ecosystems." *Anthropocene*,

humans should make kin and defines kin as "those who have an enduring mutual, obligatory, non-optional, you-can't-just-cast-that-away-when-it-gets-inconvenient, enduring relatedness that carries consequences."[82] Haraway argues that these kinships come with context-specific "accountabilities and obligations and pleasures."[83] Making kin means we should regard our fellow worldlings not as inanimate objects but agents with interests. It means we should recognize that "[l]ike it or not, we are in the string figure game of caring for and with precarious worldlings made terribly more precarious by fossil-burning man making new fossils as rapidly as possible in orgies of the Anthropocene and Capitalocene."[84] Making kin can change the story.[85]

The story is in dire need of change. According to the Intergovernmental Panel on Climate Change, "[w]ithout additional mitigation efforts beyond those in place today, and even with adaptation, warming by the end of the 21st century will lead to high to very high risk of severe, widespread and irreversible impacts globally."[86] These impacts include rising sea levels, extreme weather events, and the likely extinction of coral reefs.[87] Beyond environmental impacts, scientists predict increased food insecurity, infectious disease transmission, and economic destabilization if humanity continues on its current course.[88] Habitat fragmentation as a result of human development has made for fewer places of refuge and increased human-animal interactions, meaning more zoonotic diseases.[89] Without a Loraxian praxis that considers the interactions and interests that sustain the fragile health of ecosystems, catastrophic imbalances are likely to continue.[90]

C. *A Loraxian Look at LEBOR*

Let us now consider how a Loraxian praxis could have potentially changed the story of LEBOR.

NAT'L GEOGRAPHIC SOC'Y, https://www.nationalgeographic.org/encyclopedia/anthropocene/ [https://perma.cc/874Z-XTTG].

[82] Paulson, *supra* note 81.

[83] *Id.*

[84] Donna Haraway, *Tentacular Thinking: Anthropocene, Capitalocene, Chthulucene*, E-FLUX J. (Sept. 2016), https://www.e-flux.com/journal/75/67125/tentacular-thinking-anthropocene-capitalocene-chthulucene/ [https://perma.cc/6C8A-ENPT].

[85] *Id.*

[86] INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2014 SYNTHESIS REPORT SUMMARY FOR POLICYMAKERS 17 (2014) [hereinafter IPCC].

[87] *Id.* at 13.

[88] Alison P. Galvani, Chris T. Bauch, Madhur Anand, Burton H. Singer & Simon A. Levin, *Human–Environment Interactions in Population and Ecosystem Health*, 113 PNAS 14502, 14502 (2016).

[89] *Id.* at 14504.

[90] IPCC, *supra* note 86, at 13.

1. *A Loraxian Praxis for Policymakers*

The LEBOR authors structure the bill to provide dual-standing collective rights to members of the Lake Erie community. This framework shores up the legal gap between community harm and community standing that has often frustrated Rights of Nature advocates under the traditional standing analysis.

This Loraxian LEBOR makes it clear who you must ask before interfering with the Lake community: You must ask the Lake.[91] The Loraxian LEBOR provides a method for electing representatives to serve as advisors for the Lake community and speak on behalf of the Lake when necessary. These Loraxian Lake representatives provide clarity over what it means to "possess the right to exist, flourish, and naturally evolve" when you care a whole awful lot about guaranteeing that right.

2. *A Loraxian Praxis for Litigators*

The City's legal department adopts a Loraxian praxis to defend LEBOR. The City recognizes that LEBOR is essential to the well-being and flourishing of the City. The City's legal team bases its strategic decisions on protecting the Lake community and listening to the whole City, not just the voices of corporate entities interested in "biggering" their economic profits. While the City recognizes that it may not succeed in defending LEBOR, the City's team plans to fight nonetheless to protect the Lake community.

3. *A Loraxian Praxis for Courts*

The Court reads LEBOR's declaration of the Lake Erie ecosystem's right to "exist, flourish, and naturally evolve"[92] as a dual-standing collective right. Rather than being impermissibly vague, the Court understands the declaration as enshrining the Lake Erie ecosystem with the right to be consulted. In the same way that a rights-wielding human gets to consent to intrusions on their rights without requiring a legislative document outlining the exact permissibility of those intrusions, Lake Erie and the Lake collective would have leeway to define what constituted an infringement of its primary right.

Next, when considering whether Toledo's right to local self-government can encompass something as large as Lake Erie, the Court considers the interrelated nature of the portions of the Lake Erie ecosystem within the City of Toledo limits and the portions outside of them. The Court recognizes that harm done to the Lake Erie ecosystem outside of those limits causes harm to the health of the collective entity of Toledo citizens and the Lake Erie ecosystem, thus falling

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[91] To be clear, the original LEBOR did not create a body to speak for the lake like the Te Pou Tupua, but a similar body is necessary to give the Lake a legally audible voice.

[92] TOLEDO, OHIO, MUN. CODE § 254(a).

within "the government and administration of the internal affairs of the municipality."[93]

Further, rather than intervening against LEBOR, a State of Ohio with Loraxian values supports the legislation, recognizing LEBOR as an effort to recognize the mutually connected nature of the ecosystems that sustain Ohio and its citizens.

4. *A Loraxian Praxis for the Community*

LEBOR is enacted, and the Lake Erie community rejoices. There is no lawsuit. Instead, Drewes Farm starts by asking the Lake's permission to use fertilizers that may impact the Lake Erie community. Representatives for the Lake Erie community work with Drewes Farms and local ecologists to determine a safe level of fertilizer for Drewes Farms to use without causing harm to the Lake Erie community. On the day the Court would have heard the Drewes Farm case, the chambers are silent. Everyone decided to go to the beach, actually. Both sides agree that it is a beautiful day for a swim. The water is clear—not a smear in sight—and, if you listen close, you can almost hear the fish hum.

V. UNLESS

"Unless someone like you
Cares a whole awful lot
Nothing is going to get better
It's not."[94]
—*The Lorax*

Before I began writing this Note, I worried and worried about what I am supposed to do with all the news and research pointing to the fact that we are too late to save our smeary planet. But now that I have written this Note, and now that you're here, well, dear reader, the solution seems perfectly clear. The Lorax was speaking to me and he was speaking to you—we both must take up the Loraxian praxis—we must practice care for each other and for our communities, even if things seem hopeless. This praxis will require our whole selves, and it may be awful. But we can do it, and we must. Unless we act to stem the tide of the unsustainable nature of humanity's current course, we risk missing the window during which we may get "the Lorax and all his friends" to come back.[95]

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[93] *In re* Complaint of Reynoldsburg, 134 Ohio St. 3d 29, 2012-Ohio-5270, 979 N.E.2d 1229, at ¶ 25 (citation omitted).

[94] DR. SUESS, *supra* note 3, at 58.

[95] *Id.* at 61.