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### Parks as Persons: Legal Innovation Or Colonial Appropriation?

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# PARKS AS PERSONS: LEGAL INNOVATION OR COLONIAL APPROPRIATION?

*Alexandra Flynn\**

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## INTRODUCTION

Vancouver’s Stanley Park is full of living things, but can it be a person? Stanley Park is a 1,000 acre stretch of park land located along the City of

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\* Associate Professor, University of British Columbia. This paper was written on the territories of the xʷməθkʷəy̓əm (Musqueam), Skxwú7mesh (Squamish) and səlilwətəl (Tsleil Waututh) Coast Salish peoples, where I live and work as an uninvited guest. I first acknowledge with gratitude the work and stewardship of Coast Salish citizens and nations and the generous invitations to think about next steps in Indigenous-municipal relationship-building. I am also grateful to the participants of Grounding law: learning with each other, held on Coast Salish lands (Vancouver) on May 28 & 29, 2019; my colleagues at UBC’s Allard School of Law who participated in the 2022 Junior Scholar Workshop; the 2022 fellows at the New School’s Institute for Critical Social Inquiry; and those who attended the 2022 Urban Law Conference in Vancouver for their feedback on various drafts of the article. Special thanks to Nick Blomley, Johnny Mack, Sara Ghebremusse, Estair Van Wagner, Brenna Bhandar, Marc Roark, Doug Harris, and the editors of the *Fordham Urban Law Journal* for engaging with the themes of this paper and for helping me to think critically about property law’s capacity to address colonialism. All errors and omissions are my own.

Vancouver's northwest peninsula. Under Canadian law, Stanley Park is owned by the federal government, under a renewable lease to the City of Vancouver, and is under the jurisdiction and management of the elected Vancouver Parks and Recreation Board. It is not just any park, but the crown jewel of one of Canada's most populated regions, winning accolades like "top park in the entire world" by TripAdvisor.<sup>1</sup> It boasts cycling and pedestrian paths that hug the wavy coast, beaches with turquoise-blue water that fill to the brim in summer months, and peaceful lakes for cranky swans. The prominence of lawn bowling and a tea house speak to the city's colonial origins. However, Vancouver is located on unceded land, which means that the land was never formally surrendered by the Musqueam, Squamish, and Tsleil-Waututh First Nations (Coast Salish First Nations).<sup>2</sup> The land upon which the park sits was once one of the largest settlements of Coast Salish inhabitants, who lived along the Pacific Northwest. For centuries, the land had economic, residential, political, and spiritual importance to Indigenous peoples.<sup>3</sup> Reminders of these inhabitants are scant and certainly do not include details of the trespassing claims won by the municipal and federal governments in 1926, which displaced Coast Salish inhabitants who had used what is now the park for economic and residential purposes.

Parks are an especially important site of city power. Parks serve as a compelling backdrop to a city's mystique, determining which spaces will be used for particular activities (cycling, walking), but not others (sleeping, urinating). They are demarcated and set aside from the development that permeates urban spaces, yet at the same time sites of social control. Parks also have important economic, social, and political significance to a broad range of people and entities, often including Indigenous communities, and are home to dwellers, visitors, and non-human species, including plants and animals.<sup>4</sup>

Stanley Park, located in Vancouver, embodies these property tensions, with unique legalities that continue to this day. It holds multiple roles. As Part I details, it comprises the unceded, ancestral traditional Indigenous lands of great economic, political, and spiritual value to Coast Salish Peoples, and was home to many families until the mid-1950s. It remains federal land, purportedly set aside for military purposes, then leased to the newly-created

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1. Amy Judd, *Stanley Park Named 'Top Park in the Entire World'*, STANLEY PARK ECOLOGY SOC'Y (June 17, 2014), <https://stanleyparkecology.ca/2014/06/18/stanley-park-named-top-park-entire-world/> [https://perma.cc/MZ8J-M7XK].

2. Douglas C. Harris, *Property and Sovereignty: An Indian Reserve and a Canadian City*, 50 U.B.C. L. REV. 321, 332, 336 (2017).

3. "Indigenous" is a broad term for those who identify as the original peoples of North America and their descendants. "First Nations" are Indigenous governments.

4. See generally Udi Ofer, *Occupy The Parks: Restoring the Right to Overnight Protest in Public Parks*, 39 FORDHAM URB. L.J. 1155 (2012).

City of Vancouver.<sup>5</sup> It is also a coveted, romanticized urban space that is the jewel of a Canadian municipality.

In the last decade, the Supreme Court of Canada has debunked *terra nullius* as a binding legal principle,<sup>6</sup> but not before the claim permitted colonial powers to acquire Indigenous lands for their own purposes — including those granted to municipal corporations, encompassing spaces later turned into public parks. First Nations and municipalities across Canada are grappling with how to move forward in the governance of such spaces, introducing legal and policy mechanisms to ‘reconcile’ with Indigenous Peoples in relation to urban lands. Many municipalities are specifically road mapping relationship-building in relation to park spaces. At the time that this article was written, the Vancouver Parks Board was undertaking a colonial audit to understand the history and future of Stanley Park,<sup>7</sup> had advanced co-management with First Nations,<sup>8</sup> and the City of Vancouver had endorsed a strategy to implement the United Nations Declaration of the Rights of Indigenous Peoples, together with the three Coast Salish nations.<sup>9</sup>

This Article, considers *personhood*, a mechanism that has been used in other jurisdictions — including cities — to legally reconfigure land

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5. Indenture Agreement, City of Vancouver-King Edward VII, Nov. 1, 1908, Vancouver City Clerk’s Department.

6. In *Tsilhqot’in Nation v. British Columbia*, [2014] 2 S.C.R. 256, 292 (Can.), the Supreme Court of Canada stated that “[t]he doctrine of *terra nullius* (that no one owned the land prior to European assertion of sovereignty) never applied in Canada.” ¶ 69. Many scholars have called into question this statement, given that the same paragraph of *Tsilhqot’in Nation* states, “[a]t the time of assertion of European sovereignty, the Crown acquired radical or underlying title to all the land in the province.” *See id.* *See also* John Borrows, *The Durability of Terra Nullius: Tsilhqot’in Nation v British Columbia*, 48 U.B.C. L. REV. 701, 702 (2015) (“If that land was owned by Indigenous peoples prior to the assertion of European sovereignty, one wonders how the Crown acquired title in the same land by merely asserting sovereignty, without a version of *terra nullius* being deployed. The Crown’s claim to underlying title on this basis ‘does not make sense.’”).

7. *See* Letter from Gen. Manager, Vancouver Bd. of Parks & Recreation, to Park Bd. Chair & Comm’rs 1, 3 (July 16, 2018) [hereinafter *Exploring Park Board’s Colonial Roots and Current Practices*], <https://parkboardmeetings.vancouver.ca/2018/20180723/REPORT-ExploringParkBoardsColonialRootsAndCurrentPractices-20180723.pdf> [<https://perma.cc/GS3W-35K8>].

8. Commissioner Mackinnon, Motion for Co-Management of Vancouver Parklands with the Musqueam, Squamish, and Tsleil-Waututh Nations, Vancouver Bd. of Parks & Recreation (Nov. 29, 2021), <https://parkboardmeetings.vancouver.ca/2021/20211213/MOTION-CoMgmtOfVancouverParklandsMSTNations-20211213.pdf> [<https://perma.cc/5QWG-S8LG>].

9. *See Council approves groundbreaking UNDRIP strategy for Vancouver*, CITY OF VANCOUVER (Oct. 26, 2022), <https://vancouver.ca/news-calendar/council-approves-groundbreaking-undrip-strategy-for-vancouver.aspx> [<https://perma.cc/D23N-T22Q>].

ownership.<sup>10</sup> Te Urewara, once a national park in New Zealand, the Atrato River in Colombia, and the Magpie and Fraser Rivers in Canada became legal “persons” after decades of advocacy by Indigenous Peoples. These natural resources now have rights, a new material and representational making of property that centres a governance role for Indigenous Peoples. This Article asks what personhood could mean for Stanley Park and for Canadian urban parks more broadly. In particular, it explores whether personhood is a legal innovation that reshapes property or, instead, whether it perpetuates the colonial appropriation in the existing legal framework. With the notion that property sets out power over the owned objects, but also the owning subjects, the Article first goes back in time to explore the legal technicalities used by municipal bodies to claim power over Stanley Park. Moving forward to today, this Article advocates for a commitment to the nuances of local Indigenous-led movements and specific Indigenous laws, and knowledge and attention to the colonial structures that form existing property rights and governance models within local governments, rather than a quick attachment to potentially emancipatory forms of property.

This Article proceeds in four parts. Part I provides background on the legal history of Stanley Park, located in Vancouver, Canada, with a focus on the displacement of the original Indigenous inhabitants. Part II examines parks as a unique legal space, explaining initiatives taken by local government to acknowledge colonialism and displacement. Part III explores recent efforts across the world to recognize the rights of nature for resources such as rivers and parks. In Part IV, the Article examines what it would mean for Stanley Park to be granted personhood status and, in particular, whether this action would be represent a legal innovation that would legitimately recognize Indigenous laws.

## I. THE LEGAL HISTORY OF VANCOUVER’S STANLEY PARK

This Part starts by traveling to the past in order to begin to understand the lore of the 400-hectare area that comprises Stanley Park, one of the largest urban park spaces in North America. Coast Salish communities inhabited these spaces from time immemorial and throughout the decades that preceded and followed what is now British Columbia joining Canada.<sup>11</sup>

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10. By ‘ownership’ I acknowledge the complex relationship between fee simple title and legal tenure, on the one hand, with other forms of entitlement, including Indigenous and Aboriginal claims under Canadian and other legal systems. See generally ROBERT NICHOLS, *THEFT IS PROPERTY! DISPOSSESSION AND CRITICAL THEORY* (2020).

11. “Time immemorial” is a term used to describe the long-standing, undisputed possession, and use of lands by Indigenous Peoples. See Lorraine Weir, “*Time Immemorial*” and *Indigenous Rights: A Genealogy and Three Case Studies* (Calder, Van der Peet,

There were Indigenous dwelling sites, burial grounds, transportation corridors, and economic development that were well known to colonial figures.<sup>12</sup> European settlers claimed rights to the Stanley Park peninsula in 1859, and the Dominion government, which would later become the Government of Canada, designated the site as a military reserve.<sup>13</sup> As Renisa Mawani states:

The making of Stanley Park was a long and protracted process that was characterised by a series of local and national struggles around space and identity. While the Dominion government had set aside the region around Burrard Inlet for military purposes, the city had its own ideas as to what could be done with this beautiful and valuable property. The city of Vancouver was incorporated in April 1886. Only one month later, officials began discussing ways in which they could lease the government reserve. Because the threat of an American invasion was no longer imminent, city officials assumed that the land was of little value to the Department of Militia and Defense. Although (and perhaps because) the population of white colonists was still very small, civic officials insisted that what the city desperately needed was to establish a colonial presence and to foster a sense of community. A park was proposed as a suitable site for the cultivation of a British identity in the newly formed frontier city.<sup>14</sup>

Vancouver City Council's first order of business on May 12, 1886, depicted in Figure 1, was to pass a resolution asking the federal government to convey a lease to the city of the peninsula "in order that it be used by the inhabitants of said City of Vancouver as a park."<sup>15</sup> The federal government agreed, for a nominal one dollar per year. The lease was renewed for ninety-nine years in 1908 and again more recently.<sup>16</sup> The presence of Indigenous communities

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*Tsilhqot'in* from *British Columbia*, 26 J. HIST. SOCIO. 383, 383–89 (2013) (reviewing critically the courts' use of the term "time immemorial").

12. See R. Mawani, *Imperial Legacies (Post)Colonial Identities: Law, Space and the Making of Stanley Park, 1859–2001*, 7 L. TEXT CULTURE 96, 104–11 (2003), <https://ro.uow.edu.au/ltc/vol7/iss1/5> [<https://perma.cc/7K7D-C582>].

13. See JEAN BARMAN, *STANLEY PARK'S SECRET* 86–88 (2005).

14. Mawani, *supra* note 12, at 107. Mawani notes, "[n]ot surprisingly, there was never any mention here of the Squamish, Musqueam or Tsleil-Watuth and their ancestral territorial claims." *Id.* at 108.

15. *Id.* at 104–06.

16. See Recommendation from Frieda Schade, Parks Cent. Area Div. Manager, Plan., Pol'y & Env't Dep't, to Env't & Parks Comm. (Mar. 28, 2013) (on file with Greater Vancouver Reg'l Dist. Bd.), <https://fraseropolis.files.wordpress.com/2013/06/regional-parks-service-review.pdf> [<https://perma.cc/D43N-3D5S>]; see also *Stanley Park – Leasing the land*, BEAUTIFUL B.C. (July 28, 2018), <https://beautifulbritishcolumbia.net/2018/07/28/stanley-park-leasing-the-land/> [<https://perma.cc/W3PZ-2LNM>].

living in Stanley Park was well known to authorities throughout this time, as seen in the map at Figure 2.<sup>17</sup>



**Figure 1: Vancouver City Council, 1886**

In 1887, Park Board staff destroyed village sites, including part of *Xwáy̓xway*, evicting residents in order to build the first park road.<sup>18</sup> This was the first of a series of events critical to the legal displacement of Indigenous residents in urban areas.<sup>19</sup> The construction revealed

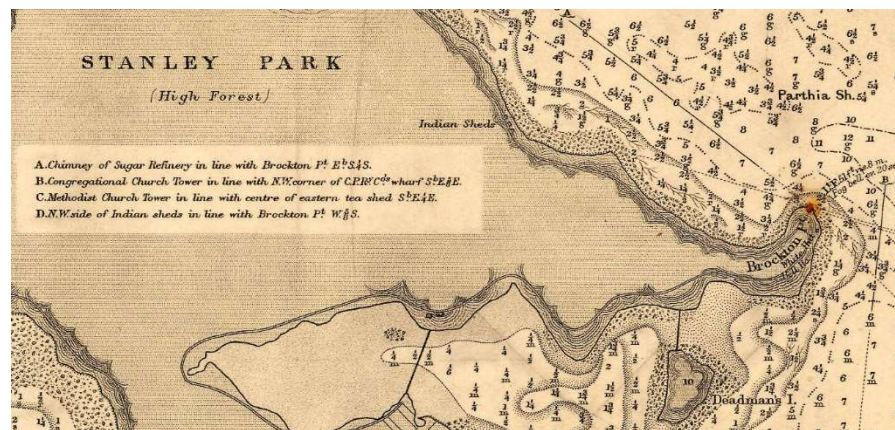
17. See HENRY CREASE, *MAP OF Burrard Inlet with Pencil Notations* (1863); see also Jane Turner, *George Vancouver Research Material*, in LAMB RESEARCH COLLECTION (Univ. of B.C., 2013), <https://ro.uow.edu.au/lrc/vol7/iss1/> [<https://perma.cc/3HPW-BZRL>].

18. See Mawani, *supra* note 12, at 120.

19. See *id.* See generally GLEN SEAN COULTHARD, *RED SKIN, WHITE MASKS: REJECTING THE COLONIAL POLITICS OF RECOGNITION* (Univ. Minn. Press, 2014) (describing academic works from Indigenous authors exploring the displacement of Indigenous Peoples in Canadian cities); Heather Dorries, “Welcome to Winnipeg”: *Making Settler-Colonial Urban Space in “Canada’s Most Racist City,”* in *SETTLER CITY LIMITS: INDIGENOUS RESURGENCE AND COLONIAL VIOLENCE IN THE URBAN PRAIRIE WEST 25* (Univ. Manitoba Press, 2019); Heather Dorries, *Planning as Property: Uncovering the Hidden Racial Logic of a Municipal Nuisance By-law*, 27 *J. L. & SOC. POL’Y*, 80, 80–102 (2017); Julie Tomiak, *Contesting the Settler City: Indigenous Self-Determination, New Urban Reserves, and the Neoliberalization of Colonialism*, 49 *ANTIPODE* 928, 928–45; Julie Tomiak, *Unsettling Ottawa: Settler Colonialism, Indigenous Resistance, and the Politics of Scale*, 25 *CAN. J. URB. RSCH.* 8, 8–21 (2016).

archaeological sites throughout the peninsula, including burial sites, with remains taken to Ottawa.<sup>20</sup> City workers also removed Indigenous families through the creation of recreational sites, including an athletic ground and cricket pitches.<sup>21</sup>

Governments used other means, unsuccessfully for a number of years, to displace Indigenous residents in and adjacent to the park. For example, in 1888 the City of Vancouver offered compensation to those whose houses had been destroyed in relation to park construction, but residents refused after seeking legal advice.<sup>22</sup> Another somewhat more fraught example comes from Coal Harbour, where a long-standing Coast Salish family with a matriarch named Mary See-em-ia successfully defended her rights to land that straddled the park and what became a city street. Through Mary See-em-ia successfully challenged the adverse possession of three acres of her land, the parcel was subsequently fractured into smaller and smaller pieces, and eventually the City acquired it.<sup>23</sup>



**Figure 2: Close-up of Map Burrard Inlet, 1891.<sup>24</sup>**

In 1897, the ownership of Deadman's Island off Brockton Point, a site with Indigenous inhabitants in Stanley Park, was contested between British Columbia and the federal government, and the court ultimately settled in

20. See Sean Kheraj, *Stanley Park*, CANADIAN ENCYCLOPEDIA (June 8, 2017), <https://www.thecanadianencyclopedia.ca/en/article/stanley-park> [https://perma.cc/YXZ4-G9BB].

21. See BARMAN, *supra* note 13, at 103–04.

22. See *id.* at 96–98.

23. *Id.* at 124.

24. Item: *Map 50 – Burrard Inlet*, CITY OF VANCOUVER ARCHIVES, <https://searcharchives.vancouver.ca/burrard-inlet-6> [https://perma.cc/C8CX-5FJ2] (last visited July 25, 2022).



favour of the latter.<sup>25</sup> Later, the City wanted to issue eviction orders against those dwelling on Deadman Island, now deemed “squatters” in Figure 3. Upon review, the Vancouver City solicitor concluded that, “the Indians remain on sufferance to the Crown, and cannot be interfered with by the City of Vancouver.”<sup>26</sup> These efforts culminated in a legal action for trespass brought in 1923 to “take all necessary steps in the name of the [federal government] and the city of Vancouver to institute proceedings in the Courts for the ejection of the squatters.”<sup>27</sup> Three cases were initially launched by the City of Vancouver, with the Government of Canada later joining as a co-plaintiff. The governments argued for a declaration of title to determine the rights of the squatters against the Crown and the City:

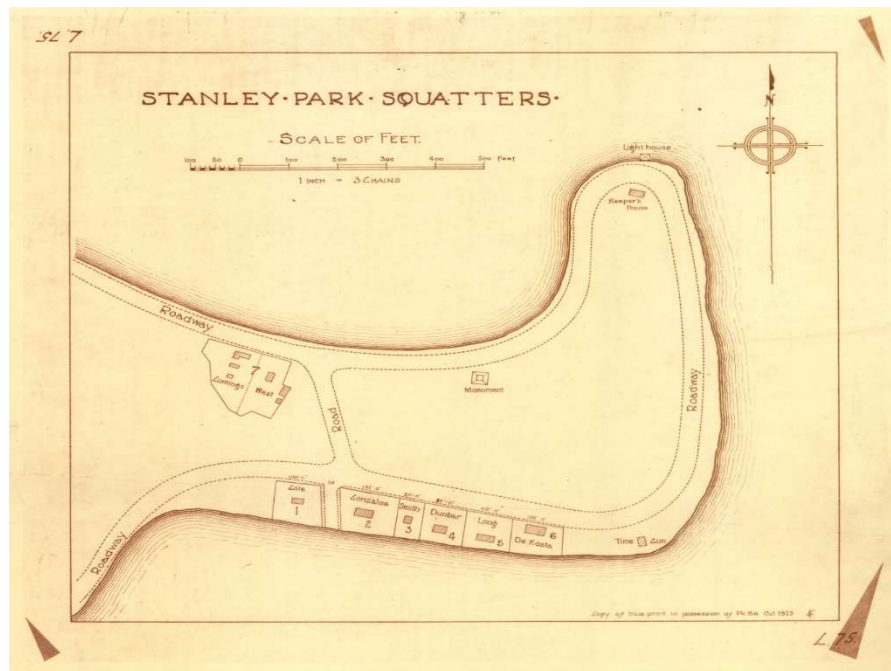
The cases centred on the concept of adverse possession, whereby occupation that went unchallenged for a specified period of time overrode legal ownership. Occupation has to be open, actual, exclusive, undisturbed and continuous over a specified time period in order to maintain a claim for adverse possession. Occupation had to be so blatant that any owner paying due attention to his property had every opportunity to begin legal measures within the statutory time period to have the occupier removed. By virtue of the Government of Canada joining the action, the time period for adverse possession was set at 60 years, as opposed to the 20 years demanded by the City of Vancouver.

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25. *British Columbia (Att’y Gen.) v. Canada (Att’y Gen.)*, 11 B.C.R. 258, C.R. [1906] A.C. 389 at 407.

26. *See* BARMAN, *supra* note 13, at 174.

27. *See* BARMAN, *supra* note 13, at 176. The action culminated in *Canada (Att’y Gen.) v. Cummings*, [1925] 1 D.L.R. 642 (Can.).



**Figure 3: City of Vancouver, 1923<sup>28</sup>**

In other words, having both the City and Crown as plaintiffs was crucial, as the time period that the defendants could argue adverse possession would span from 20 to 60 years.<sup>29</sup> The three cases were ultimately appealed to the Supreme Court of Canada.

The central issues raised by the city had to do with the duration of the families' legal tenure to the land based on the laws of the colonializing government.<sup>30</sup> City officials claimed that the residents moved to the area after the land had already been discovered and taken by the British Crown.<sup>31</sup> The principal piece of evidence was a map created in 1863, around the contested time of the Dominion reserving the peninsula for military purposes, which showed only one home on it, not multiple villages.<sup>32</sup>

28. *Stanley Park Squatters, 1923*, VANCOUVER IS AWESOME (Dec. 21, 2016), <https://www.vancouverisawesome.com/history/stanley-park-squatters-1923-1933167> [<https://perma.cc/788P-QFMH>].

29. See BARMAN, *supra* note 13, at 177; Renisa Mawani, *Genealogies of the Land: Aboriginality, Law, and Territory in Vancouver's Stanley Park*, 14 SOC. & LEGAL STUD. 315, 326 (2005) (examining the factual evidence adduced under the 60 year period).

30. See *Canada (Att'y Gen.) v. Cummings*, [1926] 1 D.L.R. 52 (SCC 1926).

31. See Mawani, *supra* note 29, at 326–27.

32. BARMAN, *supra* note 13, at 188.

Without written evidence that satisfied the particular rigidities of colonial law, the families brought forward multiple witnesses who corroborated the residence of the families for over 60 years. The superior court judge disregarded this testimony, describing the “old” witnesses who “contradicted themselves.”<sup>33</sup> At the Court of Appeal, Justice Martin, one of the three presiding judges, disagreed, describing the testimony as “remarkable and beyond expectation precise.”<sup>34</sup> He said, after a careful examination of the Indigenous witnesses:

I know of no good reason for placing the testimony of our native Indians at all on a lower plane than those of the others, and in particular I perceive none in this case for doubting the substantial accuracy of their testimony in all essentials. Indeed, in some respects it is remarkable and beyond expectation precise.<sup>35</sup>

He concluded, “[i]t is difficult to imagine a stronger position in law than that of the holder of a possessory title antedating the birth of the colony itself.”<sup>36</sup>

In 1926, the Supreme Court of Canada disagreed, describing the Indian testimony as “indecisive” and held that the families were trespassers.<sup>37</sup> While the City never forced the families to leave, without secure land rights or amenities they slowly dwindled and died out, and were entirely gone by the mid-1950s. Until the early 2000s, the only Indigenous signifiers were those selected by the parks commission; created by First Nations in northern British Columbia, they did not reference the Coast Salish villages or sites.<sup>38</sup> And, despite their long-standing claims, Coast Salish First Nations have only been engaged in consultations and dialogue regarding the park since 2011.<sup>39</sup>

## II. CITY POWER AND CITY PARKS

In countries such as the United States and Canada, some cities are subsumed within the authority of state governments, and can have no protection against changes to the design and power imposed on them. In the United States, for example, some cities are subject to state pre-emption on

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33. *Id.* at 207.

34. *Id.* at 214.

35. *Id.*

36. *See* Canada (Att’y Gen.) v. Cummings, [1926] 1 D.L.R. 52 para. 11 (SCC 1926).

37. BARMAN, *supra* note 13, at 53.

38. *See generally* Mawani, *supra* note 29.

39. *See* Memorandum from Gen. Manager, Vancouver Bd. of Parks & Recreation to Park Bd. Chair & Comm’rs (Apr. 9, 2018) (on file with Park Bd.), <https://parkboardmeetings.vancouver.ca/2018/20180416/REPORT-UnderstandingStanleyPark-DevelopingaComprehensivePlan-20180416.pdf> [<https://perma.cc/SX44-QWX8>].

particular issues.<sup>40</sup> In Canada, the design of the constitution, whereby provinces have jurisdiction over “municipal institutions in the Province” has led municipalities to be called “creatures of the province.”<sup>41</sup> This limited constitutional status represents a particular view of municipal authority rooted in a doctrine known as “Dillon’s Rule,” a framework of municipal authority advanced by John Dillon, a nineteenth century American jurist who objected to purported waste by local governments.<sup>42</sup> Dillon’s rule proposes instead that states and provinces keep a “watchful eye” on local governments to ensure that resources are not inappropriately used.<sup>43</sup>

Even so, cities can exercise a great deal of power and their actions have had a notable effect on Indigenous Peoples. As noted by many scholars, including Professors Brenna Bhandar and Nick Blomley, planning was central to early colonizing efforts and it continues to frame cities as places for private landownership by settlers.<sup>44</sup> Professor Libby Porter writes that, “[p]roperty shapes how cities function, how they look and how we live in them. And property fragments urban environments. It chops up the landscape with titles, fences, investment portfolios, development options and planning zones.”<sup>45</sup> That system of property is imposed on Indigenous lands.<sup>46</sup> It entrenches non-Indigenous property rights and excludes the people from whom the land was taken. Most importantly, property works against the recognition that cities, too, are Indigenous places.

As noted earlier in this Article, Vancouver is located on unceded land, which means that the land was never formally surrendered by Coast Salish First Nations.<sup>47</sup> Vancouver’s municipal government planned the city without involvement from the Coast Salish First Nations, although this is

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40. See generally Richard Briffault, *The Challenge of the New Preemption*, 70 STAN. L. REV. 1995, 1997 (2018).

41. See Alexandra Flynn, *With Great(er) Power Comes Great(er) Responsibility: Indigenous Rights and Municipal Autonomy*, 34 J.L. & SOC. POL’Y 111, 113 (2021); see also Ron Levi & Mariana Valverde, *Freedom of the City: Canadian Cities and the Quest for Governmental Status*, 44 OSGOODE HALL L.J. 409, 411 (2006).

42. See Levi & Valverde, *supra* note 41.

43. See Eugene Meehan, Q.C. et al., *The Constitutional Legal Status of Municipalities 1849-2004: Success Is a Journey, But Also a Destination*, 22 NAT’L J. CONST. L. 1, 4-5 (2007); see also Levi & Valverde, *supra* note 41, at 415-16.

44. See Nicholas Blomley, *Making Space for Property*, 104 ANNALS ASS’N AM. GEOGRAPHERS 1291, 1292 (2014). See generally BRENNA BHANDAR, *COLONIAL LIVES OF PROPERTY: LAW, LAND, AND RACIAL REGIMES OF OWNERSHIP* (2018).

45. Libby Porter, *How Can We Meaningfully Recognise Cities as Indigenous Places?*, CONVERSATION (Oct. 4, 2016, 10:39 PM), <https://theconversation.com/how-can-we-meaningfully-recognise-cities-as-indigenous-places-65561> [<https://perma.cc/X8J3-99UJ>].

46. See Jordan Stanger-Ross, *Municipal Colonialism in Vancouver: City Planning and the Conflict Over Indian Reserves, 1928-1950s*, 89 CANADIAN HIST. REV. 541, 543 (2008).

47. See generally Harris, *supra* note 2 (discussing the history of the traditional territories of the Musqueam, Squamish, and Tsleil-Waututh Coast Salish peoples).

changing rapidly. In the past decade, the City has shifted its governance approach in ways that go beyond the actions of other Canadian municipalities. In 2013, the City of Vancouver announced a “Year of Reconciliation” and declared support for the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the first municipality to do so.<sup>48</sup> A year later, the “City of Reconciliation framework” called on council and city staff to “develop appropriate protocols for the City of Vancouver to use in conducting City business that respect the traditions of welcome, blessing, and acknowledgement of the territory.”<sup>49</sup> At the time, Khelsilem one of the councillors of Squamish Nation, stated:

[T]he proclamation of unceded territory was in my opinion a gesture by white politicians doing what they were told would be a good gesture to do and were genuine in their attempt to do what they thought was right. I think the most useful critiques of these gestures address the usefulness or non-usefulness of these gestures and what tangible actions could be done instead (if there are any to be done instead). From that standpoint I’d say this gesture that completely falls into the definition of colonial politics of recognition at best give the potential for awareness. But beyond that it’s empty in providing any form of restitution or repatriation for the dispossession the City of Vancouver continuously supports by its very existence.<sup>50</sup>

More recently, Vancouver has undertaken a review of all city bylaws to ensure that they conform with UNDRIP.<sup>51</sup> And while the city has not engaged with questions of property, land, or restitution, court decisions have resulted in the return of reserve lands in central Vancouver to the Squamish Nation, who are developing a 1,200 unit affordable housing project.<sup>52</sup> The Coast Salish First Nations have also come together in the past ten years to

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48. See *Motion on Notice: Support for Reconciliation with Aboriginal Peoples*, CITY VANCOUVER (Feb. 26, 2013), <https://council.vancouver.ca/20130226/documents/motionb3.pdf> [https://perma.cc/PX4R-X8ZR].

49. Councillor Reimer, Motion for Protocol to Acknowledge First Nations Unceded Traditional Territory, Vancouver City Council (June 25, 2014), <https://council.vancouver.ca/20140625/documents/ptec6.pdf> [https://perma.cc/VDF7-ZBVX].

50. This is Khelsilem, Comment to *Beyond a Formal Acknowledgement*, MAINLANDER (Jan. 7, 2015), <https://themainlander.com/2015/01/07/beyond-a-formal-acknowledgement/comment-page-1/#comment-3080> [https://perma.cc/7NX5-HURF].

51. See *UNDRIP Task Force*, CITY VANCOUVER, <https://vancouver.ca/people-programs/undrip-task-force.aspx> [https://perma.cc/2XNQ-KHQR] (last visited Aug. 1, 2022).

52. See *Vision*, SENAKW, <https://senakw.com/vision> [https://perma.cc/VCN3-BMTQ] (last visited Aug. 1, 2022).

purchase and develop parcels of land, creating small neighbourhoods with parks, housing, and commercial space.<sup>53</sup>

The Vancouver Parks and Recreation Board (the “Park Board”) governs the City’s parks and has its own elected council, with a close economic and political relationship with the City of Vancouver.<sup>54</sup> It was created and empowered by the City of Vancouver to oversee the development of Stanley Park and, later, all parks, in the City. Very recently, the City’s Park Board announced that it was confronting its colonial past. In 2018, the Park Board approved a “colonial audit” outlining actions by the City dating back to 1888, including removing entire First Nations communities from their traditional territories when the city declared jurisdiction over Stanley Park and other beach areas.<sup>55</sup> The Park Board also apologized to the Coast Salish First Nations for taking away ancestral lands, digging up burial grounds to build roads and playgrounds, and other damaging actions.<sup>56</sup>

While the City of Vancouver and the Park Board are limited in their power to dispose of park lands, the transfer of park land to First Nations has never been on the table.<sup>57</sup> The Park Board hired a reconciliation planner tasked with advancing goals and creating lasting relationships between the government and Indigenous communities, using the UN Declaration of Indigenous Peoples as a guide.<sup>58</sup> The Park Board concluded:

One of the core acts of colonialism enacted by settlers is the theft of lands and removal of entire communities from their ancestral homes. This core act of colonialism has been undertaken by the Park Board since its inception – beginning with the declaration of jurisdiction over “Stanley Park,” as well as beach areas around the City, that were of both cultural significance, and were home, to local nations.<sup>59</sup>

In addressing this colonial history, and based on a multi-step, long-term approach, the Park Board has affirmed, most recently in 2022, the need to “[c]ontinue [the] Park Board’s precedent-setting intergovernmental

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53. See *About Us*, MST DEV. CORP., <http://mstdevelopment.ca/about-us/> [<https://perma.cc/BB73-W6WB>] (last visited Sept. 11, 2022).

54. See *Vancouver Board of Parks and Recreation*, CITY VANCOUVER, <https://vancouver.ca/your-government/vancouver-board-of-parks-and-recreation.aspx> [<https://perma.cc/M6UK-LLLX>] (last visited Sept. 11, 2022).

55. See *Exploring Park Board’s Colonial Roots and Current Practices*, *supra* note 7.

56. See *id.* at 4.

57. See Vancouver Charter, S.B.C. 1953, c 55, para. 488 (Can. B.C.). Under Section 488 of the Vancouver Charter, “[t]he Board shall have exclusive possession of, and exclusive jurisdiction and control of all areas designated as permanent public parks of the City . . . and such areas shall remain as permanent public parks, and possession, jurisdiction and control of such areas shall be retained by the Board.” *Id.*

58. See *Exploring Park Board’s Colonial Roots and Current Practices*, *supra* note 7, at 4.

59. See *id.* at 3.

approach to the future stewardship of Stanley Park and other relevant lands.”<sup>60</sup> This process will take time and ongoing commitment.<sup>61</sup>

So far, the conversation has not pivoted or considered the repatriation of lands or changes in ownership. But what if it did? What form could it take? I look next at personhood as a hypothetical possibility, a legal technology that has been used in other contexts to address alternative claims to park ownership.<sup>62</sup>

### III. PERSONHOOD AND COLONIAL PROPERTY RIGHTS

Legal geography acknowledges that “law is an anthropocentric terrain. Not only is law the product of human actors, it entrenches the interests of humans over virtually all others and centers the reasonable human person as a main legal subject.”<sup>63</sup> The question is thus “how ‘nature’ and ‘law’ operate in mutually reinforcing ways to create the key socially constructed, discursive or epistemological sites through which we collectively make sense of the world and our place within it.”<sup>64</sup> One of the ways that law constructs itself is in relation to which entities have rights or obligations. In western legal systems, including in the United States, law centers “persons” as right-bearing vessels.<sup>65</sup>

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60. Letter from Gen. Manager, Vancouver Bd. of Parks & Recreation, to Park Bd. Chair & Comm’rs 1 (Apr. 13, 2022), <https://parkboardmeetings.vancouver.ca/2022/20220425/REPORT-MSTFlagsBrocktonPoint-20220425.pdf> [<https://perma.cc/U23P-FRX8>]. See generally letter from Gen. Manager, Vancouver Bd. of Parks & Recreation, to Park Bd. Chair & Comm’rs (Apr. 9, 2018), <https://parkboardmeetings.vancouver.ca/2018/20180416/REPORT-UnderstandingStanleyPark-DevelopingaComprehensivePlan-20180416.pdf> [<https://perma.cc/2GMR-X3MG>].

61. See *Reconciliation: Mission, Vision, & Values*, VANCOUVER BD. PARKS & RECREATION (Apr. 16, 2018), <https://parkboardmeetings.vancouver.ca/files/POLICY-ParkBoardReconciliation-MissionVisionValues-20180416.pdf> [<https://perma.cc/VA4Q-VACE>].

62. Cf. Maneesha Deckha, *Initiating a Non-Anthropocentric Jurisprudence: The Rule of Law and Animal Vulnerability Under a Property Paradigm*, 50 ALBERTA L.R. 783, 784 (2013) (noting that nonhuman animals have been granted rights of life, liberty, and freedom from torture).

63. *Id.*

64. Bronwyn Parry, *David Delaney, Law and Nature*, 33 J. HIST. GEOGRAPHY 701, 702 (2007).

65. See generally Dinah Shelton, *Nature as a Legal Person*, 22 VERTIGO (2015).

### A. Personhood Differs Based on Jurisdiction, Form, and Legal Technicality

Personhood is inextricable from the modern colonial legal system, where humans and those deemed persons are granted particular rights.<sup>66</sup> Those deemed “persons,” whether human or not, are able to exercise power. As David Delaney writes, property law establishes power not only over the owned objects but also in relation to the owning subjects.<sup>67</sup> Even where non-human entities are deemed legal persons — for example, corporations and municipalities — there is no displacement of the object (the person) exercising rights within the colonial legal system.

Personhood is connected to the “rights of nature” movement, which can be loosely grouped within two families of scholarship. The first, *people-dependent personhood*, is dependent on human actors. Five decades ago, in 1972, American professor Christopher Stone proposed that the state “give legal rights to forests, oceans, rivers and other so-called ‘natural objects’ in the environment – indeed, to the natural environment as a whole.”<sup>68</sup> This article was subsequently cited by dissenting United States Supreme Court justices in the 1972 case, *Sierra Club v Morton*.<sup>69</sup> Stone argued that legal personality would grant legal standing and enforceable rights to natural resources, where the resource (advanced by an interested individual) could then sue in tort law to receive compensation for damages, to be used for environmental remediation.<sup>70</sup> Other scholars advance what can be understood as *standalone personhood*. In contrast to humans asserting nature’s rights, nature has stand-alone rights without dependence on assertions of non-humans. This offers a normative realignment of the subjects and objects of property law. Personhood is thus part and parcel of law’s power.<sup>71</sup> Where nature has been granted personhood status, it “owns” itself, and is thus able to set its own agenda for actions and interests, based on whatever decision-making model is established.

Some argue that personhood is a “potentially revolutionary precedent[] that offer[s] a path forward to redefine relationships between governments, indigenous peoples and the land in the 21st century.”<sup>72</sup> Personhood

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66. See generally CHIP COLWELL, *PLUNDERED SKULLS AND STOLEN SPIRITS* (2017).

67. See DAVID DELANEY, *LAW AND NATURE* 222 (2003).

68. Christopher Stone, *Should Trees Have Standing? – Toward Legal Rights for Natural Objects*, 45 S. CAL. L.R. 450, 456 (1972).

69. See 405 U.S. 727, 742 (1972).

70. See Stone, *supra* note 68, at 476–77.

71. See generally COLIN DAYAN, *THE LAW IS A WHITE DOG: HOW LEGAL RITUALS MAKE AND UNMAKE PERSONS* (2011).

72. Julian Brave NoiseCat, *The Western Idea of Private Property is Flawed. Indigenous Peoples Have it Right*, *GUARDIAN* (Mar. 27, 2017),



initiatives are growing sharply although unevenly across the world, with 39 countries responsible for almost 90% of all initiatives.<sup>73</sup> Personhood may be recognized through a variety of legal mechanisms, including a constitution, national law, court decision, or local regulation or policy.<sup>74</sup> Motivations for creating legal personhood, whether specific to a river or another natural resource, are varied; they may be rooted in Indigenous or religious beliefs, the human right to a healthy environment, anti-corporate or anti-capitalist sentiments, contamination or disaster relief, or other reasons.<sup>75</sup> As such, there is no such thing as a single type of designation of legal personhood.

### B. Examples of Personhood Status for Nature: New Zealand and Colombia

Two early examples illustrate the two main ways that personhood for nature can be “created” — through enactment by government (New Zealand), and as determined by courts (Colombia). In New Zealand, personhood status was first granted to a national park called Te Urewera. Under the Te Urewera Act 2014, the park became “a legal entity [that] has all the rights, powers, duties, and liabilities of a legal person.”<sup>76</sup> Fee simple interest in the land is vested in Te Urewera itself<sup>77</sup> and is largely inalienable.<sup>78</sup> In September 2017, the Act created board approved *Te Kawa o Te Urewera*, a management plan also required under the Act.<sup>79</sup> The board must act on behalf of, and in the name of, Te Urewera,<sup>80</sup> and may “consider and give expression to” Tūhoe knowledge,<sup>81</sup> including “tapu me noa,” which conveys, “in tapu, the concept of sanctity, a state that requires respectful human behaviour in a place; and in noa, the sense that when the tapu is lifted from the place, the place returns to a normal state.”<sup>82</sup> Two-thirds of the board membership are Tūhoe.<sup>83</sup>

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<https://www.theguardian.com/commentisfree/2017/mar/27/western-idea-private-property-flawed-indigenous-peoples-have-it-right> [<https://perma.cc/KAB9-PZFM>].

73. Alex Putzer et. al., *Putting the Rights of Nature on the Map. A Quantitative Analysis of Rights of Nature Initiatives Across the World*, J. MAPS 2, 3 (2022).

74. *See id.*

75. *See id.*

76. Te Urewera Act 2014, s 11(1) (N.Z.); *see also Te Kawa O Te Urewera - English, Tūhoe*, TŪHOE, <https://www.ngaituhoe.iwi.nz/te-kawa-o-te-urewera> [<https://perma.cc/DCX7-D7MP>] (last visited Nov. 9, 2022).

77. *See* Te Urewera Act 2014, s 12(3) (N.Z.).

78. *Id.* at s 13.

79. *See id.* at s 2(2).

80. *Id.* at s 17(a).

81. *Id.* at s 18(2).

82. *Id.* at s 18(3).

83. *See id.* at s 21(2).

Personhood was a legal and political compromise that followed years of negotiation between New Zealand's national government and the Tūhoe people for authority over and title to the land.<sup>84</sup> New Zealand's constitutional foundation includes the Treaty of Waitangi, signed on February 6, 1840 by representatives of the British Crown and Māori chiefs from the North Island of New Zealand.<sup>85</sup> The Tūhoe people never signed the Treaty of Waitangi and resisted the Crown's claims to its traditional homelands.<sup>86</sup> Even so, by 1927, the Crown had claimed two-thirds of Tūhoe lands, including those that became Te Urewera National Park in 1954.<sup>87</sup> Personhood in Te Urewera thus represents a compromise, a means of using New Zealand (rather than Tūhoe) law to create a legal framework for the 210,000 hectares of land.<sup>88</sup> Tūhoe do not have title to the lands.<sup>89</sup>

In contrast, Colombia's Constitutional Court first recognized the rights of nature in 2015 in a case involving environmental damage to a river and watershed,<sup>90</sup> stating "rivers, mountains, forests, and the atmosphere must be protected, not because of their utility to humans but because of their own rights to exist."<sup>91</sup> The river flows through jungles between Panama and Colombia.<sup>92</sup> Colombia's Constitutional Courts recognized the Atrato River Basin's right to "protection, conservation, maintenance and restoration" given extreme levels of mercury and cyanide pollution. The river is home to a number of communities, both Indigenous and Afro-Colombian.<sup>93</sup>

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84. See Andrew Geddis & Jacinta Ruru, *Places as Persons: Creating a New Framework for Māori-Crown Relations*, FRONTIERS PUB. L. 298, 298 (Jason NE Varuhas & Shona Wilson Stark eds., 2019).

85. See Sandra Morrison & Ingrid Huygens, *Explainer: The Significance of the Treaty of Waitangi*, CONVERSATION (Feb. 5, 2019), <https://theconversation.com/explainer-the-significance-of-the-treaty-of-waitangi-110982> [perma.cc/J3UZ-5V5K].

86. See Vincent O'Malley, *Tūhoe-Crown Settlement – Historical Background*, MAORI L. REV. (2014), <https://maorilawreview.co.nz/2014/10/tuhoe-crown-settlement-historical-background/> [https://perma.cc/S2PC-8MZR].

87. See *id.*

88. See Geddis & Ruru, *supra* note 84.

89. See Brad Coombes, *Nature's Rights as Indigenous Rights? Mis/recognition through Personhood for Te Urewera*, OPEN EDITION J. (Jan. 1, 2020), <https://journals.openedition.org/eps/> [https://perma.cc/HA98-GX6K].

90. See Laura Villa, *The Importance of the Atrato River in Colombia Gaining Legal Rights*, EARTH L. CENTRE (May 5, 2017), <https://www.earthlawcenter.org/blog-entries/2017/5/the-importance-of-the-atrato-river-in-colombia-gaining-legal-rights> [https://perma.cc/JH4C-V8GD].

91. See RENATA COLWELL ET AL., ENV'T L. CLINIC, UNIV. VICTORIA, LEGAL PERSONALITY OF NATURAL FEATURES: RECENT INTERNATIONAL DEVELOPMENTS AND APPLICABILITY IN CANADA 22 (2017), [https://www.elc.uvic.ca/wordpress/wp-content/uploads/2018/05/2017-02-03-LegalPersonalityNatural-Features\\_web-version.pdf](https://www.elc.uvic.ca/wordpress/wp-content/uploads/2018/05/2017-02-03-LegalPersonalityNatural-Features_web-version.pdf) [https://perma.cc/KW47-8DJZ] (citing Corte Constitucional, Noviembre 10, 2016, Sentencia T-266/16).

92. See Villa, *supra* note 90.

93. See COLWELL ET AL., *supra* note 91.

Colombia's recognition of Rio Atrato as a legal person came through the courts, in November 2016.<sup>94</sup> In 2015, a coalition of Indigenous and Afro-Colombian groups brought the case, alongside an environmental non-governmental organization, Tierra Digna.<sup>95</sup> The plaintiffs brought the case under Section 86 of the Colombian Constitution, calling for the protection of constitutional rights by local and national institutions for failing to protect the "social rule of law."<sup>96</sup>

The Colombian Constitutional Court opined that the state has violated "fundamental rights to life, health, water, food security, the healthy environment, culture and the territory of ethnic communities" by "failing to prevent harmful river mining."<sup>97</sup> That Court asserted that the river has rights to protection, conservation, maintenance, and restoration, with a corresponding duty on the State to provide them. The Court held that a social rule of law involves the protection of the environment, including rivers, forests, food sources, and biodiversity.<sup>98</sup>

Legal personhood for Rio Atrato differs from Te Urewera. First, the judgment gave the government "one year to develop a comprehensive plan to end the pollution and damage being inflicted on the Atrato River watershed by activities such as deforestation and illegal mining,"<sup>99</sup> including a restoration plan for the river basin, baseline studies, and the implementation of protective measures.<sup>100</sup> Second, in regard to governance, the judgment instructed the claimant communities to establish joint guardianship for the Atrato River basin, comprised of one government representative and one representative from the local Indigenous groups. Guardians have the responsibility to follow up on the protection and restoration that the State must provide for the river.<sup>101</sup> Rio Atrato's guardians receive advice from the Humboldt Institute and the World Wildlife Foundation, rather than from Indigenous communities.<sup>102</sup>

Another important feature of legal personhood for Rio Atrato and Te Urewera involves the engagement with Indigenous legal traditions.

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94. David R Boyd, *Recognizing the Rights of Nature: Lofty Rhetoric or Legal Revolution*, 32 NAT. RES. & ENV'T 13, 17 (2018).

95. See COLWELL ET AL., *supra* note 91, at 22–23.

96. See Cristy Clark et al., *Can You Hear the Rivers Sing? Legal Personhood, Ontology, and the Nitty-Gritty of Governance*, 45 ECOLOGY L.Q. 787, 807 (2019).

97. Susan Bird, *Colombia Grants Legal Rights to the Polluted Atrato River*, TRUTHOUT (June 3, 2017), <https://truthout.org/articles/colombia-grants-legal-rights-to-the-polluted-atrato-river/> [<https://perma.cc/G3EB-AUMM>].

98. See Clark et al., *supra* note 96, at 807.

99. Boyd, *supra* note 94.

100. See COLWELL ET AL., *supra* note 91, at 23.

101. *Id.*

102. *Id.*

Examples from New Zealand and Colombia, where green spaces and rivers located on Indigenous lands are now deemed persons, suggests that emancipatory property configurations can reimagine relations between Indigenous peoples and colonial governments. Under this vision, the contours of law's definitions are acceptable to colonial property models, but cognizant of Indigenous values.<sup>103</sup> In the case of Te Urewera, the original goal was the return of the lands to the Tūhoe, which was rejected by the government. Scholarship on the Act that provides personhood status for Te Urewera argues that "is not a direct translation of Indigenous conceptions, but rather a potential straitjacket for Indigenous emancipatory politics."<sup>104</sup> In regard to Rio Atrato, the court's judgment focuses on repair, centering the state and humans, rather than giving agency to the river itself. There is no mention in the judgment of Raizal people's spiritual relationships with the Rio Atrato basin or any sacred beings within it, or those of other Indigenous peoples.<sup>105</sup>

### C. Personhood at the Local Level

Many local governments in the United States have granted personhood status to nature through awarding legal rights to nature. As of 2018, more than three dozen American municipalities in ten different states have passed ordinances recognizing that nature has rights, including Pittsburgh, Pennsylvania; Santa Monica, California; and Athens, Ohio.<sup>106</sup> The ordinances are often enacted to oppose industrial activities viewed as causes of environmental degradation. Most ordinances work by allowing citizens to file a lawsuit on behalf of nature for any harm caused by the land from pollution or other harm (like sewage sludge polluting bodies of water). Once damages are awarded, the municipality or a trust use them to restore ecosystems.<sup>107</sup> These ordinances can be politically successful. An amendment to Florida's Orange County Charter was supported by

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103. See Te Urewera Act, 2014 (N.Z.).

104. Mihnea Tănăsescu, *Rights of Nature, Legal Personality, and Indigenous Philosophies*, TRANSNATIONAL ENV'T L., 429, 429 (2020).

105. COLWELL ET AL., *supra* note 91, at 23–24.

106. Boyd, *supra* note 94, at 13.

107. For example, a City of Pittsburgh ordinance states that: "Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, possess inalienable and fundamental rights to exist and flourish within the City of Pittsburgh. Residents of the City shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems." PITTSBURGH, PA., CODE § VI, art. I, ch. 618.03(b) (2010), <https://pittsburgh.legistar.com/LegislationDetail.aspx?ID=766814&GUID=3306C0FD-CF64-4F19-9D73-052C69CB9738&Options=ID|Text|&Search=gas> [<https://perma.cc/X2WN-TQQU>].

referendum in 2020 with 89% voting in favour of the rights of nature provision.<sup>108</sup> Personhood at the local level both affirms a municipality's beliefs on the protection of nature and provides a legal basis for objecting to alleged environmental harm.

Ordinances are not the only legal mechanism used to recognize personhood. In Euanitshit, Quebec, a province of Canada, the Minganie Regional Municipality and the Innu Council of Ekuanitshit created a Joint Declaration stating that the Magpie River had nine rights, among them the right to flow, maintain biodiversity, be free from pollution, and to sue.<sup>109</sup> Guardians would be appointed by the Minganie Regional Municipality and the Innu Council of Ekuanitshit to advocate on behalf of the river.<sup>110</sup> The responsibilities of the guardians include the ability to research, apply and comply with traditional Innu knowledge, introduce conservation planning such as species protection, management and recovery, and participate in consultations on behalf of the river.<sup>111</sup> Although the Declaration was only recently implemented, the designation of personhood represents an important step for the Indigenous Nations involved.<sup>112</sup> However, as Anishinaabe-Métis Professor and lawyer Aimée Craft states, some Indigenous groups are engaging with the rights of nature movement because it aligns with their own legal systems, “[b]ut it’s not a perfect fit” for all.<sup>113</sup>

The ʔEsdilagh First Nations and Tsilhqot’in Council of Chiefs in British Columbia, Canada, passed the ʔEsdilagh Sturgeon River Law in 2020, stating that the Fraser River was a person, which has suffered from pollution and

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108. Press Release, Ctr. For Democratic & Env’t Rights, First in the U.S.: “Rights of Nature” State Constitutional Amendment Filed in Florida to Protect Waterways (June 2, 2021), <https://www.centerforenvironmentalrights.org/news/first-in-the-us-rights-of-nature-state-constitutional-amendment-filed-in-florida-to-protect-waterways> [https://perma.cc/H9T9-WE2M].

109. See Justine Townsend et al., *Rights For Nature: How Granting A River ‘Personhood’ Could Help Protect It*, CONVERSATION (June 3, 2021), <https://theconversation.com/rights-for-nature-how-granting-a-river-personhood-could-help-protect-it-157117> [https://perma.cc/ZT9T-LXWN].

110. See *id.*

111. See *id.*; see also Susan Nerberg, *I am Mutehekau Shipu: A River’s Journey To Personhood In Eastern Quebec*, CANADIAN GEOGRAPHIC (Apr. 8, 2022), <https://canadiangeographic.ca/articles/i-am-mutehekau-shipu-a-rivers-journey-to-personhood-in-eastern-quebec/> [https://perma.cc/5L8P-DP9D].

112. See *id.*

113. Krista Hessey, *How A River In Quebec Won The Right To Be A Legal Person*, GLOB. NEWS (Oct. 2, 2021), <https://globalnews.ca/news/8230677/river-quebec-legal-person/> [https://perma.cc/V2GU-5ZS2].

dangerously low fish stocks.<sup>114</sup> Article 4(1)(f) of that law states that: “People, animals, fish, plants, the *nen* [land], and the *tu* [water] have rights in the decisions about their care and use that must be considered and respected.”<sup>115</sup> The ʔEsdilagh Government may make orders, or regulations, or issue permits or other authorizations for persons, projects, or proposed projects that may implicate the river.

Unlike the examples in New Zealand and Colombia, local ordinances are all vulnerable to court action. In the United States, an ordinance introduced by Grant Township, a rural Pennsylvania town, that enacted a rights of nature ordinance, has been in court since 2013 to protect natural resources after a permit was issued by state and federal governments to allow resource extraction.<sup>116</sup> At question is whether the state — not municipality — has the authority to regulate oil and gas development.<sup>117</sup> Likewise, the district court for the Northern District of Ohio held that the Lake Erie Bill of Rights, which was enacted by residents of Toledo, Ohio, was invalid under the United States Constitution.<sup>118</sup> The district court concluded that three provisions of the Bill of Rights were unconstitutionally vague, therefore infringing the Fourteenth Amendment of the United States Constitution which protects the right to due process.<sup>119</sup> Lawyers have already concluded that the Magpie River resolution may be subject to dispute, especially as there are no plans to recognize rights of nature in the Constitution.<sup>120</sup> Likewise, it is unclear

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114. See TʔILHQOTʔIN NATION, ʔESDILAGH STURGEON RIVER LAW (2020), <http://files.harmonywithnatureun.org/uploads/upload995.pdf> [<https://perma.cc/9CR9-QXZZ>].

115. *Id.*

116. CMTY. ENVʔT LEGAL DEF. FUND, ‘Unrepentant’: *Grant Township Refuses to Bend to the Fracking Industry*, CMTY. ENVʔT LEGAL DEF. FUND, <https://celdf.org/grant/> [<https://celdf.org/grant/>] (last visited Nov. 9, 2022); see also Complaint at, Pa. Gen. Energy v. Grant Twp., Case No. 1:14-cv-00209-JFM (W.D. Pa., Aug. 8, 2014). PGE sued Grant Township in federal district court to overturn the community’s ordinance. PGE succeeded in a motion for sanctions against the Township for “frivolous, unfounded, harassing pleadings and motions in pursuit of . . . illegitimate ends, thereby increasing litigation costs, abusing process, and wasting judicial resources.” Opinion & Order at 5, *id.* (Jan. 5, 2018). See generally Cmt’y. Env’t Legal Def. Fund, *A Court Hearing for Grant Township: Eight Years Later, and Still No Injection Well*, CMTY. ENVʔT LEGAL DEF. FUND (May 4, 2022), <https://celdf.org/2022/05/a-court-hearing-for-grant-township-eight-years-later-and-still-no-injection-well> [<https://perma.cc/PZ4F-3JHX>].

117. *See id.*

118. See Brigit Rollins, *Turning the Tides: Judge Finds Lake Erie Bill of Rights Unconstitutional*, NAT’L AGRIC. L. CTR. (Mar. 4, 2020), <https://nationalaglawcenter.org/turning-the-tides-judge-finds-lake-erie-bill-of-rights-unconstitutional/> [<https://perma.cc/DHC7-B4RZ>].

119. *See id.*

120. See Elizabeth Raymer, *Quebec’s Magpie River is Granted Personhood*, CANADIAN LAW. (Mar. 9, 2021), <https://www.canadianlawyermag.com/practice-areas/esg/quebecs-magpie-river-is-granted->

how Canadian governments and regulators will react to Indigenous recognition of personhood in relation to the Fraser River.<sup>121</sup>

#### IV. CAUTIOUS PERSONHOOD: INDIGENOUS LAWS AT THE CENTER

There are reasons to be cautious about a sweeping endorsement of personhood in relation to parks generally and Stanley Park in particular. First, many advocates of personhood emphasize the promise of environmental protection without reference to or reflection on Indigenous laws. Professor David Boyd, UN Special Rapporteur on Human Rights and Environment suggests that personhood could strengthen the legal protection that “generations of environmental laws have failed to provide,” rather than natural resources acting as a commodity and a piece of property to be owned and discarded as desired by the owner.<sup>122</sup>

However, personhood is rooted in a certain conception of property and ownership. In some Indigenous legal orders, property is not “owned” and cannot be ceded. Indigenous law may be premised on a “reciprocal relationship with the Earth.”<sup>123</sup> Professor Robin Wall Kimmerer, who wrote *Braiding Sweetgrass* about bringing together Indigenous ways of knowing and scientific knowledge,<sup>124</sup> states that, “[l]and is not capital to which we have property rights; rather it is the place for which we have moral responsibility in reciprocity for its gift of life.”<sup>125</sup> As Indigenous leader, Grand Chief Harold Turner, stated:

The Creator gave us life, inherent rights and laws which governed our relationship with nations and all peoples in the spirit of coexistence. This continues to this day. We as original caretakers, not owners of this great country now called Canada, never gave up our rights to govern ourselves and thus are sovereign nations. We, as sovereign nations and caretakers of Mother Earth, have a special relationship with the land. Our responsibilities

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personhood/353752#:~:text=In%20February%20the%20regional%20county,and%20to%20take%20legal%20action [https://perma.cc/U9C7-3UFF] (quoting a legal expert’s uncertainty over the “weight behind the legal argument [derived from the resolution]”).

121. See T̄S̄L̄H̄Q̄ŌT̄ IN NATION, *supra* note 114.

122. Juliette Deck, *Rights for Rivers*, MCGILL INT’L REV. (May 16, 2021), <https://www.mironline.ca/rights-for-rivers/> [https://perma.cc/7EQ2-2HRX].

123. Nii Gaani Aki Inini – Leading Earth Man (Dave Courchene), *Sharing Indigenous Knowledge on Survival in Times of Climate Change*, TURTLE LODGE (Nov. 18, 2016), <http://www.turtlelodge.org/wp-content/uploads/2016/11/Sharing-Indigenous-Knowledge-on-Survival-in-Times-of-Climate-Change-Turtle-Lodge-Nov18.2016.pdf> [https://perma.cc/6SNG-TYS9].

124. See Robin W. Kimmerer, *Greed Does Not Have to Define Our Relationship to Land: On Choosing to Belong to a Place*, LITERARY HUB (June 4, 2020), <https://lithub.com/robin-wall-kimmerer-greed-does-not-have-to-define-our-relationship-to-land/> [https://perma.cc/5ANK-7S6B].

125. *Id.*

to Mother Earth are the foundation of our spirituality, culture and traditions . . . . Our ancestors did not sign a real estate deal, as you cannot give away something you do not own.<sup>126</sup>

Second, personhood may not be consistent with Indigenous worldviews or have Indigenous support, and may not necessarily be rooted in Indigenous legal orders or reflective of Indigenous priorities.<sup>127</sup> Professor Melany Banks notes the challenges in recognizing Aboriginal title under Canadian law, as the Crown has underlying title.<sup>128</sup> The granting of personhood status could instead “allow is for the de-coupling of the question of the sovereignty of Indigenous people from the process of protecting the land.”<sup>129</sup> Similarly, Professor Carwyn Jones asserts that using legal personality “confirms that Māori legal traditions will not be recognized on their own terms but instead only through the closest equivalent from the Western legal tradition.”<sup>130</sup> In other words, personhood is a legal compromise that is not necessarily rooted in Indigenous law.<sup>131</sup>

In relation to Stanley Park, Coast Salish First Nations have not endorsed legal personhood in the context of Stanley Park, nor confirmed that it is an appropriate way to reflect their interests. The legal system that adopts it constructs particular rights, obligations, powers, and limitations in relation to the “personhood” designation. It is crucial to ask what personhood is meant to accomplish, who is asking for it, and the intentions behind it. Personhood requires that we also need to be mindful of geographic, cultural, social, historical, and legal differences.<sup>132</sup> The specific spaces of Stanley Park have their own unique contexts, with different nations, laws, and significances. There are multiple First Nations involved, each with their own governance models and peoples that have a role to play in contemplation of legal technologies. There are risks of superficially adopting institutional responses developed in radically distinct contexts while expecting identical results.

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126. ROYAL COMMISSION ABORIGINAL PEOPLES, REPORT OF THE ROYAL COMMISSION ON ABORIGINAL PEOPLES, VOL 2: RESTRUCTURING THE RELATIONSHIP 428 (1996), <https://data2.archives.ca/e/e448/e011188230-02.pdf> [<https://perma.cc/A2VX-XPW6>].

127. See Mihnea Tanasescu, *Nature Advocacy and the Indigenous Symbol*, 24 ENV'T VALUES 105, 115 (2015).

128. Melany L. Banks, *Aboriginal Title or Legal Personhood for Land?*, 2 CANADIAN SOC'Y FOR STUDY PRAC. ETHICS 1, 8 (2018).

129. *Id.* at 16.

130. CARWYN JONES, NEW TREATY, NEW TRADITION: RECONCILING NEW ZEALAND AND MĀORI LAW 98 (2016).

131. See Banks, *supra* note 128, at 12.

132. See Cristy Clark et al., *Can You Hear the Rivers Sing? Legal Personhood, Ontology, and the Nitty-Gritty of Governance*, 45 ECOLOGY L.Q. 787, 794 (2019).



Third, as Professors Eve Tuck and Wayne Yang warn, “settler moves to innocence are those strategies or positionings that attempt to relieve the settler of feelings of guilt or responsibility without giving up land or power or privilege, without having to change much at all.”<sup>133</sup> Legal personhood can be introduced without changing power relations. Professor Glen Coulthard cautions that:

You’re never going to gain the full recognition of your freedom from your oppressor. They will only recognize you to the extent that it serves their own interests. The effect that that recognition being given to you has on the dominated or the colonized is that they come to see that gift of recognition as a form of justice or decolonization itself. You think recognition is actually freedom and decolonization, but it’s really colonization in a new form.<sup>134</sup>

In the context of Stanley Park and parks broadly speaking, there are significant limitations on granting a form of personhood that goes beyond symbolism to shifts real power to Indigenous peoples.<sup>135</sup> Personhood without legal teeth would embody the “settler move to innocence” that Tuck and Yang outline; that mere veneer has replaced dialogue, with a rush to conclude the difficult task of confronting colonialism within cities. Truly engaging with law, Indigeneity, and parks in relation to Stanley Park means confronting the use of trespass claims to displace Coast Salish residents and the use of municipal laws to allow the City and Park Board to govern Stanley Park for centuries without acknowledging Coast Salish people. It would involve ongoing and committed dialogue to affirm that personhood was the appropriate designation under Indigenous as well as Canadian law.

### CONCLUSION

This Article has considered personhood status for parks, with a specific focus on Stanley Park in Vancouver. Personhood can shift the way in which natural resources are understood in law, from an *object* of property to a *subject* of property. The resource itself can now set its own agenda and advance its rights through stewards or guardians acting on its behalf. This has enormous potential for environmental protection in particular. Personhood can also shift the governance of natural resources from colonial governments to Indigenous populations, as evidenced in New Zealand. As

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133. Eve Tuck & K. Wayne Yang, *Decolonization is not a Metaphor*, 1 DECOLONIZATION: INDIGENEITY, EDUC. & SOC’Y 1, 10 (2012).

134. H.G. Hamilton, *Beyond a Formal Acknowledgement*, MAINLANDER (Jan. 7, 2015), <https://themainlander.com/2015/01/07/beyond-a-formal-acknowledgement/comment-page-1/#comment-3080> [<https://perma.cc/CXS5-U4KB>] (quoting This is Khelsilem’s comment).

135. See Banks, *supra* note 128; JONES, *supra* note 130.

the examples of Te Urewara and Rio Atrato show, success is especially evident at the national scale.

In the context of local governments, the potential of personhood to meaningfully advance Indigenous rights is less certain. Local ordinances, where judicially tested, have been overturned by courts. In the Canadian context, personhood is a more recent phenomenon, and it remains unclear how courts would endorse or apply personhood given the constitutional status of local governments. Moreover, First Nations have played a pivotal role in determinations of personhood in both the Magpie and Fraser Rivers.

In this thought experiment — could Stanley Park be a person? — I suggest cautious personhood. If personhood is appropriate under the respective laws of the Coast Salish First Nations, Indigenous involvement is a precondition, with Indigenous laws necessary to affirm Stanley Park as a person. Such actions would de-center the city itself as the granter of rights under their own terms, strengthen the personhood designation, and ensure that personhood is not a settler rush to innocence.