Chapter IV: Diversity of Practice[1]

Both in theory and in practice, a dominant, orthodox view of the rights of nature has developed. I have shown how it has been built through the advocacy of a transnational policy network, drawing on an ecotheological tradition steeped in liberal rights advocacy. The coherence of a potential movement for rights of nature is, however, questioned by the appearance of cases that diverge significantly from the conceptual contours explored thus far. Several cases in Aotearoa[2] New Zealand are markedly different from the ones already seen, also in the sense that they do not share the same intellectual history. It is worth looking at these carefully. I want to start with what I find to be the most extraordinary case of rights of nature so far, namely the passage of Te Urewera[3] from a national park to the status of self-owning legal entity.

The 2014 law that accomplished this passage deserves detailed examination, for several reasons. Despite the fact that Te Urewera precedes the Whanganui river Act (2017), the latter has become

1 This chapter draws in part on a previously published article: Rights of Nature, Legal Personality, and Indigenous Philosophies, *Transnational Environmental Law*.

2 Māori name for New Zealand.

3 This is the name of a part of the North Island that is home to Tūhoe, a Māori group that has had the most conflictual history with the settler state. Until well into the 20th century, lands were confiscated and Tūhoe leaders and political activists persecuted. Today, this part of New Zealand is still seen as a mysterious place. Te Urewera is a vast area of mountainous forested landscapes, often shrouded in mist. Tūhoe call themselves the children of the mist.

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much more famous internationally. This is perhaps because rivers exert a certain pull on the imagination, whereas Te Urewera is only significant to outsiders if one digs a bit deeper, as that name on its own doesn't say much to people not already familiar with it. Its relative obscurity notwithstanding, this case is radical in the way in which it departs from rights orthodoxy in practice, and the way in which it builds a hybrid legal order with consistent and, as we will see, decisive Tūhoe participation. Te Urewera exposes latent possibilities that were simply not visible in other cases, and it does so precisely because it thinks everything anew. It's worth following that journey.

Te Urewera: Adventures in Ontology

The most important contextual background for understanding the legal personality of Te Urewera are the Treaty negotiations between Māori groups and the New Zealand government. As Sanders (2018) explains, 'the grant of legal personality to Te Urewera and the Whanganui river took place as part of the Treaty of Waitangi settlement process, through which the Crown acknowledges breaches of its obligations to Māori under the 1840 agreement'. To understand the importance of the Treaty settlement process, it is necessary to briefly reflect on the history of New Zealand's colonization.

The first significant contact between Europeans and Māori dates back to 1769,[4] when the *Endeavour*, captained by James Cook, landed on the eastern shores of the North Island. Seventy years and many missionaries and settlers later, the British Crown and many (but not all) Māori chiefs signed the 1840 Treaty of Waitangi, the most important document in New Zealand's history (Jones 2016). After the signing in Waitangi, the Treaty was taken across the island for additional signatures. Tūhoe, the inhabitants of Te Urewera, have

4 Technically the first known contact with Europeans was 13 December 1642, when Abel Tasman sailed past New Zealand. However, this encounter did not lead to landing or settlement, which did not occur until Cook's arrival.

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never signed,[5] though this does not mean that they, and their land, were not affected by this monumental event.

Indeed, starting in the 1860s, a period of aggressive colonization began, with land purchases and confiscations greatly expanding the settler populations. Demography shifted from Māori majority to Māori minority in little more than 50 years. The Māori population 'dropped from around [200,000] in 1840 to [40,000] in 1900. Epidemics of influenza, measles, diphtheria, and tuberculosis, as well as ill-health caused by changes in diet and living conditions, all affected the population. Other deaths, of course, occurred in battle with the colonizer …' (Jackson 1992, 2). Te Urewera remained the last bastion of Māori *tikanga*,[6] as it was only in 1865 that the Crown 'confiscated much of [Tūhoe's] most productive land'.[7] Between 1865 and 1871 there was a war between the Crown and Tūhoe in Te Urewera which, by the Crown's own admission, devastated Māori groups through starvation, executions, and further appropriation of lands (O'Malley 2014, Finlayson 2014).

The Treaty of Waitangi was signed in two language versions, a Māori and an English one. The history of the difference between these two is extremely important and has been amply debated. One of the most contentious concepts for the purposes of the present discussion is that of *tino rangatiratanga*. Jones (2016, 54) explains that the term varies in meaning from 'self-government' to 'sovereignty' or 'full authority'. The Waitangi Tribunal has argued that 'no one

5 Ngai Tūhoe Deed of Settlement Summary (June 4, 2013). Also see Binney (2009).

6 Meaning law, way or custom. In legal discussions, the term is used to denote Māori law, that is to say legal custom of Māori origins and application. Much in the discussion of legal personality for nature centers around the idea that this construct represents a hybridization of *tikanga* Māori and Crown law. The word is composed of *tika*, meaning right or correct, and *nga*, which is the plural definitive article in te reo, the Māori language. *Tikanga* therefore indicates the right way of doing things, which brings it into much closer communication with the European tradition of natural law and natural rights than with the modern tradition of liberal individual rights.

7 Deed of Settlement Summary.

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single English concept effectively captures the full meaning of the term' in part because, unlike sovereignty in English, it has spiritual connotations as well as implications of dominion over particular territories (Jones 2016, 56). In the Māori version, Article two of the Treaty of Waitangi guarantees the chiefs *tino rangatiratanga*. This term already opens up towards the vast and rich Māori *tikanga* that was slowly forced into the molds of state law.

Recent scholarship on the Treaty as well as recent judicial decisions have more or less settled on the opinion that, at the time of signing, the chiefs did not cede their sovereign ability to direct the life of the community or ownership of their lands (Sanders 2018, Jackson 1992). In the English version of Article One of the Treaty, 'sovereignty' was ceded to the Crown, while in the Māori version it was *kawanatanga*, or 'governorship' (Erueti 2017, 717). English colonists and their successive governments increasingly acted as if the Treaty of Waitangi had transferred sovereignty of Aotearoa to the Crown, while Māori chiefs operated under the understanding that they had retained *tino rangatiratanga*. Tūhoe have been remarkably consistent throughout this history in affirming *mana motuhake*, a term very close in meaning to *tino rangatiratanga*. As Higgins (2018, 130) explains, 'distinctions between *mana motuhake* and *tino rangatiratanga* are contextual rather than categorical, but while they have much in common, *mana motuhake* more strongly emphasizes independence from state and Crown and implies a measure of defiance'. This is not surprising given the especially conflictual history between Tūhoe and the Crown.

Throughout the 19th century, Tūhoe defiance was also expressed through the sheltering of other Māori people that were fleeing persecution elsewhere (Binney 2009), such that 'Richard Boast describes Te Urewera as the last "major bastion of Māori de-facto autonomy"' Higgins (2018, 130). This autonomy was officially recognized in law when, in 1896, 'the Urewera District Native Reserve Act provided for local Tūhoe self-government over a 656,000-acre Reserve, and for decisions about the use of land to be made collectively and according to Tūhoe custom. The Act guaranteed the protection of Tūhoe lands, which could not be sold without Tūhoe consent and then only to the Crown' (Finlayson 2014).

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The Act was never implemented, though it set a unique precedent in recognizing Tūhoe's authority in Te Urewera. 'Perhaps the most remarkable aspect of [the Act] was its intention to give effect to tino rangatiratanga or mana motuhake' (Jones 2014). Despite this intention, the early 20th century saw blatant disregard for the Act, with 'the government simply… buying land interests directly from individuals, in direct contravention of its own laws' (O'Malley 2014). As if to catch up with the reality on the ground, in 1922 the government repealed the Urewera District Native Reserve Act, putting an end to this early period of experimentation in plural sovereignty. Further shrinkage of Tūhoe land ensued, which led to massive emigration from the area. In 1954, Te Urewera became a national park, which seemed to seal its fate as a settler fantasy of nature forever stolen from within an intricate human-nature genealogy.

It is significant to note the clear role of the national park designation in appropriating lands from Tūhoe authority. This was not a fluke of history or a unique event. Rather, nature conservation under the model of the national park has functioned as a system of enclosure and extension of state power since its inception in the United States (see Duffy et al 2019, Büscher et al 2012, Büscher and Fletcher 2020, Tănăsescu and Constantinescu 2020, Constantinescu and Tănăsescu 2018), where it was applied to native territories before being exported throughout the world together with colonial power. In the 20th century, nature conservation gave a new life to policies of territorial enclosure by providing the moral justification of environmental benefits. As Macpherson (2021b) recalls, Te Urewera "was declared a national park" and "'a jewel in the national conservation estate', without consultation with Tūhoe nor recognition that they had any special interest in the land".

This history of drowning out *tikanga* in favor of state law was most significantly affected by the Treaty of Waitangi Act of 1975, which inaugurated the Waitangi Tribunal, 'a standing commission of inquiry established to inquire into Māori claims that laws, policies, acts or omissions of the Crown are or were inconsistent with the principles of the Treaty of Waitangi' (Sanders 2018, 208). The Tribunal only has powers of recommendation, though this has not rendered it powerless. Indeed, 'the tribunal began to have an in-

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fluence on public policy, despite its lack of powers to compel the government to take notice of its recommendations' (Belgrave 2013). As Belgrave continues, 'it was partly in recognition of this success that in 1985 the fourth Labour Government extended the tribunal's jurisdiction back to 1840, with far-reaching consequences that were only dimly understood at the time'. This set in motion the contemporary era of negotiations between the government and Māori *iwi* and *hapū* for breaches of the Treaty.[8]

The grant of legal personality to diverse landscapes in New Zealand should therefore be understood in the post-1985 context of Treaty settlements. It is this historical period that elevates the Treaty of Waitangi to the most significant document in Māori – Crown relations. Before 1985, the Treaty of Waitangi had no particular legal status or force. As Belgrave notes, 'until the creation of the Waitangi Tribunal, no court or commission of inquiry had needed to define what was actually agreed to at Waitangi' (Belgrave 2013). The idea that Māori-Crown relations are defined by the differences in translation briefly summarized above is itself a late 20th century narrative that accords well with the contemporary period of Treaty settlements. It also shows that the Treaty, in the 19th century, 'could not be pinned down to a single interpretation for its European participants, let alone among the more than 500 rangatira representing diverse Māori communities' (Belgrave 2013).

Tūhoe claims to Te Urewera, like *Whanganui iwi* claims to the Whanganui river, can be interpreted as complex negotiations about who owns the land, or more precisely about who has ultimate authority in governing the lands. The idea of legal personality provides a provisional solution to this question. Unlike in the cases explored in the previous chapter, we are here starting to see a specific context of contestation that, for largely pragmatic reasons, settles on the idea of legal personality as a possible negotiation tool. The issue of rights, as well as the idea of Nature, are much less prominent than the issues of ownership and authority (Sanders 2018, Macpherson 2019, 2021).

8 Names for Indigenous Māori descent groups. *Iwi* denotes a larger group than *hapū*.

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The history of Treaty negotiations might suggest that Māori descent groups feature as fully equal participants in a process of negotiation. However, such Treaty negotiations always take place against a backdrop of state power to impose the general framework for discussion. Higgins makes the point that Treaty negotiations force Māori to come together in ways that are not based on Māori custom. She argues that 'the process that is placed upon iwi to create "mandated large natural groupings" by the Office of Treaty Settlements' is itself an imposed framework (Higgins 2019, 132). She continues: '…the settlement systems are not determined by Māori and often contravene *tikanga Māori*, or any "customary system of authority"'. This has the potential to create tensions within Māori communities, as *tikanga* systems of membership might or might not correspond with official requirements for commencing negotiations. In the case of Te Urewera, it was Te Kotahi a Tūhoe that received the mandate to negotiate with the Crown for Treaty settlements.[9]

Negotiations between Tūhoe representatives and the Crown began in 2005. For Tūhoe, the return of Te Urewera under their authority was non-negotiable, although it was far from clear at the outset what this return might look like. The government, in turn, feared that 'negotiating Te Urewera and mana motuhake would lead to Tūhoe creating a separate nation and closing borders and access to Te Urewera, which was still a National Park at the time. This sensationalism led to the Prime Minister removing Te Urewera from the negotiation table at the eleventh hour before the signing of the Agreement in Principle between the Crown and Tūhoe' (Higgins 2019, 135). This led to the halting of negotiations in 2010, because for Tūhoe 'Te Urewera and mana motuhake are inextricably linked'. The refusal to negotiate further on the part of Tāmati Kruger, Tūhoe chief negotiator and senior leader of Te Kotahi a Tūhoe, forced the

9 Echoing Higgins' point about the tensions that might be created by the requirement of a unified *iwi*, Binney recalls the internal struggles between *hapū* regarding who was the rightful representative of Te Urewera in negotiations with the Crown. See J. Binney, *Stories Without End: Essays 1975-2010* (Bridget Williams Books, 2010), pp. 364-5.

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government back to the table and eventually resulted in the government granting legal entity status to Te Urewera.

Te Urewera Act 2014 establishes Te Urewera as a *legal entity*, a term used fairly consistently throughout the document. As I argued in Chapter 2, the idea of a legal person mixes moral and legal conceptions in ways that are not always helpful. Here, the idea of a legal entity offers a way out of the moral/legal confusion promoted by legal persons.[10] Te Urewera is not a person, first and foremost in Māori views. Rather, the legal compromise reached through negotiation institutes a new entity, a term that allows for a lot of openness as to how to conceive of what has been inaugurated. That being said, the text of Te Urewera Act also sometimes uses the two terms synonymously. For example, Section 11.1 declares that 'Te Urewera is a legal entity, and has all the rights, powers, duties, and liabilities of a legal person'. This reflects the undertheorized nature of the difference between legal entities and persons.

Section 11.2 mandates that the aforementioned rights, powers and duties must be exercised on behalf of Te Urewera by Te Urewera Board, therefore designating a specific representative for the legal entity. Constructing Te Urewera as an entity can therefore be interpreted as a way of being transparent about the artificiality of the construction itself, thereby allowing the Board ample discretion regarding how to represent Te Urewera and its specific life-form. Unlike the cases we saw previously, here the issue of standing is decided in a very specific way, i.e. by vesting it in the Board. I will come back to the significance of this.

The construction of Te Urewera as a legal entity in the context of the Treaty negotiations is a compromise that avoids vesting land ownership either in Tūhoe or the government. It also avoids vesting full political authority in either party and instead opts for the construction of a Board that would be the de facto and de jure governor of Te Urewera, while the owner is Te Urewera itself. Indeed, Section 17 states that the board was 'created in order to act on behalf of, and to "provide governance"' to Te Urewera. Subsequent sec-

10 See Tănăsescu (2020) for a detailed discussion of this point, in relation to both Te Urewera and the Ecuadorian constitution.

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tions explicitly allow the Board to govern according to Tūhoe principles.[11] Tūhoe leaders have used the space opened up by the difference between 'providing governance' and 'Tūhoe principles': instead of opting for a conventional governance regime where people manage nature, Tūhoe ontology subverts the requirement of governance by recognizing natural entities themselves as capable of self-governance. This space of innovation is granted explicit approval by the law's designation of Te Urewera as an entity and therefore not modelled on pre-existing governance arrangements.

As Macpherson (2021b) points out, Te Urewera Act has precedents in New Zealand history inasmuch as it is similar to co-management agreements that the Crown had reached in the past with other *iwi*. However, the legal entity status is a clear departure, and one that comes out of Tūhoe insistence on negotiating common values on which the new arrangement could be based. Equally important is the fact that Tūhoe activism in this case cut its own path, adapted to specific historical and environmental conditions. The point of this arrangement, unlike other co-management ones, is to foreground the issues of ownership and authority, which are directly related to historical Tūhoe grievances.

In this context of ontological mixing between the Crown and Tūhoe, the rules for appointing Board members and the internal rules of decision making become very important for understanding how legal recognition might work in practice. Also important is the appointment panel, which consists of the trustees of Tūhoe Te Uru Taumatua,[12] the Minister of Conservation and the Minister of Treaty Negotiations. In the first three years of functioning, the Board is composed of four representatives for both the Crown and Tūhoe. After the first three years of functioning, this changes to six

11 18.2 and 18.3.

12 The seven trustees are available here: https://www.ngaituhoe.iwi.nz/governance.

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members appointed by Tūhoe and three by the Ministers.[13] The appointment panel can remove previously appointed Board members.

Section 31 establishes that 'Board members must promote unanimous or consensus decision making, as the context requires'. Sections 33 and onwards lay down the various decision rules. If a decision cannot be reached by consensus and must be put to a vote, it must be carried by an 80% majority of those present and at least two members who were appointed by the Ministers. Section 40 declares that 'financially speaking and for tax purposes, Te Urewera and the Board are the same person'.

These kinds of details are important because it is only through them that the novelty of this arrangement can be recognized. It is also through the particularities of the case that we can start to see that here we are really talking about a new *political* arrangement, over and beyond the legal innovation. The very point of the legal innovation is to create ongoing debates about a new and underdefined actor. The lack of precise definition *is* the point, and taken together with the obligation to govern in constant dialogue among parties (natural ones included) it forces a constant reassessment of all actors. In this sense, Te Urewera act offers the possibility of understanding all parties involved in novel ways, because it does not set the idea of personhood as a model to be emulated. Instead, it focuses on the governance arrangement that realigns power relations away from Crown dominance and towards an as yet unknown future.

According to the 2014 Act, the Board is tasked with drafting and following a management plan, Te Kawa o Te Urewera.[14] The language that characterizes future management plans in the Te Urewera Act falls squarely within a Western legal and managerial tradition dominated by outcomes, targets, and so on. As Carwyn Jones (2016) points out, Māori terms are heavily used in the preamble and

13 At the time of this writing, the second Board had commenced its term. In addition to Board members, the Te Urewera Act 2014 appoints a Tūhoe chairman in perpetuity.

14 Hereafter Te Kawa. Available at https://www.ngaituhoe.iwi.nz/te-kawa-o-te-urewera.

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historical parts of the documents (the symbolic ones), while there is "a general paucity of Māori language within the operational provisions of these instruments". This experience was very similar to the ones of Ecuador and Bolivia, where indigenous notions are heavily used in the preamble and overall the symbolic parts of the text.

However, the Board brilliantly subverts state power through the management plan itself. Crucially, this kind of subversion was already made possible by the careful and long-term parsing out of power relations, something that was not explicitly done in Ecuador and Bolivia. It is, after all, the law itself that allows full freedom of drafting a plan, which opens up spaces of authority that can further consolidate Tūhoe control. One purpose of the management plan, as explained by the law, is 'to set objectives and policies for Te Urewera'. Te Kawa was drafted with strong input from Tāmati Kruger, a chief negotiator and senior leader of Te Kotahi a Tūhoe, as well as Board member and chairman of Tūhoe Te Uru Taumatua, who had been instrumental in negotiating the 2014 Act with the Crown. He turned the conventional framing of the relation between nature and management on its head by stating that 'Te Kawa is about the management of people for the benefit of the land – it is not about land management'.

Even though the 2014 Act stays broadly within the apparatus of the State, Tūhoe managed to create a space where their authority could become fuller. They did this in several ways. First, and perhaps most importantly, through the direct linking of Te Urewera to a designated representative, namely the Board. Unlike in the other cases we saw so far, here there was no assumption of rights doing their work by themselves, as it were. Tūhoe were acutely aware of the need to have their own relationship to the land recognized as primary. This leads Macpherson (2021b) to conclude that Te Urewera act, if seen from the anthropocentric – ecocentric distinction, is squarely within the first camp. She argues, correctly in my view, that Te Urewera can be just as well seen as an indigenous rights case, rather than a rights of nature case that follows the theoretical history explored earlier. This means that Te Urewera shows a path for the rights of nature that goes through careful political arrange-

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ments and dismisses altogether the notion that the law can, or even has to be, ecocentric.

Second, the concept of legal entity, hitched to the representative power that Tūhoe secured for themselves, allows them broad margins in defining how the land will be governed. These margins had to be secured precisely because the terms of the negotiation themselves were imposed by the settler state. In other words, Tūhoe could only sediment their authority in Te Urewera through a legal mechanism that would allow them to define what authority may mean in practice. All of the detailed provisions of the act set up an infrastructure for the deployment of authority, guided by shared values. But the actual content of Tūhoe government is to be decided in practice, partly because it is through practice that it *can* be defined. This is a powerful rejection of totality thinking.

Lastly, Te Kawa steers clear of the issue of rights altogether. Te Urewera will have some rights because of its legal entity status (Macpherson 2019), but what these may be is nowhere defined. This way, the historical baggage that comes with the concept of rights is cut out altogether. Instead, the management plan focuses on reciprocity with the land and the responsibility people have towards it (Tănăsescu 2022). Though rights have become hegemonic to the point of saturation, this arrangement shows how to side-step their totalizing power and propose alternatives that may as well, in the long run, erode some of that power.

The issue of nature conservation is mostly vested in the Board and therefore left open. When it was a national park, Te Urewera was managed by the Department of Conservation which, under the current arrangement, lost control of its former 'crown jewel'. In fact, there is nothing particularly 'environmental' about the construction of Te Urewera as a legal entity. Macpherson (2021b) points out that the powers given to the Board include those of creating bylaws and "to authorize certain activities that are otherwise prohibited under conservation laws, including the taking, cutting or destroying of indigenous lands and the hunting of indigenous animals".

This is because Tūhoe, like many other Indigenous Nations elsewhere, relate to the environment through a mode of paying attention to it that is reproduced through use. The Tūhoe concept of

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management is *mana me mauri*, that is to say the "sensitive perception of spiritual and living force in a place" (Macpherson 2021b). But this kind of perception can only occur with repeated interactions that partly, and importantly, center on *using* existing resources. The conservation ethic, which relegated Indigenous People to noble guardians of nature, is again revealed as an imposition.

The provisions of Te Urewera Act were not primarily motivated by environmental concerns, but rather by power relations. The rights of nature appeared as a pragmatic way of solving a dispute, and it was used creatively to this end. As far as the state is concerned, the settlement reached with Tūhoe is final. However, given the history of colonial relations, there is no reason to believe that this is in fact so. The new legal provisions in Te Urewera are but the next stage in a centuries-old dispute over how to govern, and who has the right to do so. It remains to be seen how this history of Crown – Tūhoe interactions will develop under the new conditions inaugurated by the Act.

To be clear, Te Urewera Act is not a piece of legislation that recognizes Tūhoe self-determination as such. Settler states would sooner accept self-owning land than Indigenous owned one, which would threaten the very definition of a state as wielding homogenous power over a homogenous territory. The self-ownership of Te Urewera also comes very close to corporate personhood, which further makes it available for integration within already existing legal infrastructures.

The exact way in which authority will be exercised by the board is unclear, for several reasons. First, Te Urewera is not one thing, but rather a contested space *within* Tūhoe communities. From afar, it looks as if Tūhoe are a homogenous and united group, but inasmuch as Indigenous agency and multiplicity is truly recognized, it stands to reason that there are internal politics as well. Second, the concession of authority by the Crown is partial because some areas are still designated 'wilderness areas', signaling the unwillingness of the state to fully let go of its history of conservation. Though the management of such areas needs to be done in consultation with the board, this is not really full recognition of Indigenous autonomy.

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Lastly, the board is tasked with undertaking measures that have everything to do with how the state conducts its business of governing. In particular, it is tasked with giving permits for a multitude of activities, some of which come under traditional use. The representative of Te Urewera is therefore tasked with bureaucratizing its functioning, an aspect that may well lead to frustration and contestation within Tūhoe communities.

This notwithstanding, new ground for more Tūhoe autonomy is being prepared, particularly through Te Kawa, the management plan. To even call this document a 'management plan' is deceiving, as that name comes with a particular concept of targets, top-down assessments, human control, and so on, which the law in fact mandates. It also comes with the idea of guardianship, which has been ubiquitous in the coverage of the New Zealand cases. However, the Board is *not* the guardian of Te Urewera, but its representative. Te Kawa makes sure that this point is immediately clear by announcing its intention to manage people, not the land.

The Western idea of guardianship is not the only concept Te Kawa rejects. Indeed, the concept of Nature that we saw earlier is also rejected for the radically emplaced Te Urewera, which is characterized as a special *marae*, that is to say a community house where vital issues are discussed and ancestors met (see Kawharu 2010). Te Kawa states that Te Urewera has its own way of being and further disrupts the colonial making of Indigenous People as inherent guardians by proposing that the character of Te Urewera needs to be constantly rediscovered, as Tūhoe need to themselves reinvent their own traditions. The latest Annual Plan available (2020-2021) announces quite boldly that Tūhoe are out of practice in their own ancestral ways, precisely because of colonialism. They therefore need to relearn ways of being that are free from the colonial inheritance touching everyone and everything. The process of relearning is always a part of the cultural hygiene of a people: constant reiteration and gradual change *is* the way in which traditions are perpetually reinvented.

The issue of rights is nowhere present in Te Kawa. Instead, it is all about the responsibility that people have to relearn ways of being in the world that are true to the particularities of a place. All of this

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does not mean that Te Urewera is a model to follow everywhere; drawing that conclusion would bring us right back to the universalist discourse of rights of nature that I find so problematic. The difference between Te Urewera Act and Te Kawa lends support to Jones' argument that the Act does not sufficiently recognize Tūhoe tikanga. If it did, there would be no need for such a major departure, in the management plan, from many of its provisions.

This notwithstanding, Te Urewera shows a way of using legal entity status as a potential tool of empowerment, while acknowledging its limitations. It also shows how the rights of nature are not automatically about 'the environment' and that they need not be fixated on rights or a general concept of Nature. Rights can be a useful tool, given certain contexts, but the context is everything. Even in New Zealand, where countless Treaty settlement claims have been lodged, only a small number of them settled on rights of nature as a partial solution. I want to now turn to another one of those.

Whanganui River and its Human Face

In 2017, Te Awa Tupua Act was signed into law. The claims settlement history that was recounted in the previous section also largely applies to this case, though of course the particular interactions between Whanganui iwi and the Crown were different than those between Tūhoe and the Crown. That being said, the 2017 legislation offering legal recognition to Whanganui river came out of the same process of claims settlement. Throughout the history of colonization, Whanganui iwi had also been remarkably consistent in claiming that Crown activities in the river contravened iwi authority, which they had never given up.

Te Awa Tupua[15] is defined by the act in line with Māori ontology as an "indivisible and living whole, comprising the Whanganui river from the mountains to the sea, incorporating all its physical and metaphysical elements" (Art.12). Of course, the separation between physical and metaphysical is itself a settler way of understanding

15 This is the name of the river in Te Reo Māori, the Māori language.

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Māori thought, a by now instinctive attempt to save the idea that there is but one world with different views on it. For Māori, however, Te Awa is an ancestor, a powerful being whose separation into riverbed, water, tributaries, and so on, they have always opposed.

The Act affords Te Awa the status of "legal person", potentially wading straight into the legal/moral thicket already explored. Crucially, it also designates one representative for Te Awa, namely Te Pou Tupua, the equivalent of Te Urewera's Board, here described as the "human face" of the river. Predictably, international coverage of this case has both assimilated it to rights of nature elsewhere, as if it was part of the same seamless history, and presented Whanganui iwi as the guardians of the river. Neither of these claims are true. This legislation shows once again the diversity of ways of thinking about the role of the law in human emplacement.

Let's take a closer look, for instance, at the issue of guardianship. I suspect that its persistence has to do with the ecotheological history that specifically theorizes human's highest role in nature as one of guardianship (Chapter 2). This also corresponds to the neat idea of an expanding circle of moral concern: when humans are finally the conscious guardians of nature, the circle would have expanded all the way. The idea of guardianship construed thus also works very well with the formatting of Indigenous People as belonging, by nature, to a specific place. There is a seeming paradox here: on the one hand, human history is seen as a continuous expansion of moral concern, while those that supposedly are already acting as guardians (the Indigenous) are precisely the people that are not modern and therefore supposedly steeped in pre-expansion morality.

The paradox is resolved by realizing, as I have previously argued, that this image of the Indigenous as natural guardians is a Western construction. Once again, this does not mean that Indigenous Peoples are inherently destructive. It simply means that no human group is naturally benign, unless it is denied its own history and agency by more powerful human groups. In order to dispel some of the fog created by this contradictory idea of guardianship and its association with expanding moral consciousness, it helps to at-

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tend more closely to how Māori thinking, in this case, construed 'guardianship'.

Anne Salmond, Aotearoa New Zealand's foremost anthropologist, recounts how Māori thought conceives of guardians as *taniwha*, that is to say local spirits, usually in the form of animals that take care of a particular place and are a gauge of its well-being. The Māori term usually translated as guardian is *kaitiaki*, whereas *kaitiakitanga* translates as guardianship. As the Waitangi Tribunal Freshwater stage two report explains, "traditionally, there were certain creatures, taniwha or birds, which were kaitiaki and 'invested with the spirits of ancestors or closely related to remote ancestors by whakapapa [genealogy]'" (p.118). The report continues by mentioning the important detail that "the observation of those kaitiaki by the people revealed whether 'all is well in the world or whether some action is needed'". People, then, are *observers* of kaitiaki, not themselves guardians of a place. Human beings exist as such only inasmuch as they are members of genealogical networks (*whakapapa*) that transmit certain responsibilities from generation to generation. And one such responsibility is that of careful observation of a place, in order to respect its *mauri* (life-force) and *hau* (spirit or vitality).

Māori tradition is as changeable as any other, but it is important to set out the broad conceptual outline of a completely different world, not just another 'cultural' point of view on the same material world. For Māori, places are not dumb matter, but are charged with ancestral power that has its own logic within which human beings have to fit themselves. When the vitality of a place is affected, then humans can intervene in ways that try to uphold the power of non-human kaitiaki. What this may mean in practice is entirely context-dependent, but part of that context, for the last centuries, has been the need for Māori to translate their concepts into Western language. Despite the adoption of the concept of legal personality, for example, it is nonetheless remarkable how consistent the resistance to the Western concept of guardianship has been.

Equally consistent has been Māori insistence on the need to *use* the environment in specific kinds of ways while not using it in others. In the case of water, for example, Māori tradition forbids the

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discharge of any waste into water bodies, or the fusing of initially separate waterways (though it also considers 'a river' to be formed by the whole catchment). It similarly relegates different activities (swimming, washing, drinking) to different areas of the river, such that the *mauri* of the river, and therefore the strength of its *kaitiaki*, are not affected. But Māori rules dictating interactions with, in this case, a river, are there in order to propagate a certain indefinite use of water. And whereas humans have the power to destroy through incorrect action, they do not have the same power to restore, precisely because they were not guardians to begin with, but mere users.

In the case of Whanganui river, Te Pou Tupua is defined as its human face, its representative perhaps, precisely because it cannot be, under Māori ontology, its guardian. "The purpose of Te Pou Tupua", the law states, "is to be the human face of Te Awa Tupua and act in the name of Te Awa Tupua" (Art. 18.2). It is important to stress that the idea of a human face is a compromise as well, an ontological hybrid, but one that veers closer to Māori ontology than the idea of guardianship does. Schedule 8 of the Act, for example, explicitly recognizes the existence of specific place-based relations between *hapū* and at least 240 rapids (*ripo*) that exist along the river. "Each ripo", the document states, "is inhabited by a kaitiaki (spiritual guardian), which is particular to each hapū". Notice that the word guardian is only ever used in relation to non-human kaitiaki. Also of great significance is the fact that the law, precisely under Māori influence, finds it necessary to locate itself at an ontological level that is quite uncomfortable for it: the level of places within the river network and the level of the privileged relationships that hold between people and these places.

The role of people is therefore one of *collective* responsibility "for maintaining the mauri of the ripo and, in so doing, the collective mauri of Te Awa Tupua" (p.88). This maintenance, which is a collective responsibility, is achieved by paying close attention to the non-human guardians of various places, because it is the "kaitiaki of the ripo [that] provide insight, guidance, and premonition in relation to matters affecting the Whanganui river, its resources and life in general". The issue of paying attention surfaces here as well as in

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Te Urewera, particularly in its management plan that gave voice to Tūhoe ontology more fully than the Act itself. The idea of attention underlines that, in relational ways of thinking (as opposed to the modern binary ones), one is always already grounded in *some* place. To know that place is to use it in certain kinds of ways that are legitimated by one's ability to pay attention to natural cycles and their changeable rhythms.

These parts of the legislation, which are clearly highly influenced by Māori legal and philosophical traditions, do not shy away from using the concept of resource, partly because use, unlike in the ecotheological history I have explored, is not frowned upon as such. In fact, the particularities of each place are in part known through the varied uses that they make possible. "Each ripo has unique physical characteristics and is valued accordingly". Part of the valuation is given by the traditions that put those characteristics to human use, for example by adapting fishing techniques to each place. That kind of place-based knowledge has survived, and this legislation attempts to bring those 'informal' legal traditions into codified versions that would allow for a more autonomous interaction with the settler state that is there to stay.

Because this agreement, like in the case of Te Urewera before, was based on the particularities of the New Zealand context, legal personality appears in a form that the earlier theory of rights for nature could not have predicted nor facilitated. Here, legal personality is not primarily concerned with rights, nor with inserting itself within binary oppositions of the thing/property or nature/resource kind. All of the oppositions we explored earlier are simply sidestepped, and legal personality is made to do something that theory did not yet know it could do. The legal personality of Te Awa Tupua attempts to solve a problem of authority over particular lands, and it is precisely its highly open nature (it has no particular content) that allows for the ontological and legal hybridization on display.

This is best seen through the political apparatus that the law mandates such that the human face of the river (Te Pou Tupua) can do its work of speaking on behalf of Te Awa Tupua. It is there, in the details of those arrangements, that the truly revolutionary nature of

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the New Zealand cases is most visible. The 2017 law does not simply grant standing to Te Pou Tupua and leave it at that. Instead, it inaugurates a highly complex and entirely novel arrangement that ensures that the human face of the river speaks in democratic fashion and acts deliberatively. This is another example of hybridization at work. Neither Māori tradition nor the settler one were particularly preoccupied in the past with democratic principles. But under present conditions, the only legitimate way in which Te Pou Tupua can act is in highly consultative fashion. The apparatus that makes that possible, however, had to be invented.

For example, Te Pou Tupua is to perform "landowner functions" on behalf of Te Awa Tupua (19.1(d)). This, as in the case of Te Urewera, means that the river owns itself, but that the landlord is yet another element, namely its human face. The appointment rules for who can be member of Te Pou Tupua (20) further make it clear that this is an unprecedented figure, and especially a new kind of political figure fit for a settler world whose right to be there in the first place cannot be effectively questioned. By law, Te Pou Tupua has to encompass both Crown and Iwi representatives, in effect claiming the right to represent the river as a shared duty for old rivals.

This is not all. Te Pou Tupua cannot simply decide what is in the best interest of the river, even though it is itself a deliberative institution. Instead, the law mandates that it relies on Te Karewao, meaning a group of advice providers, and Te Kōpuka (29ff), meaning "a permanent joint committee" (33.1). The purpose of all of these different institutions is to safeguard the well-being of Te Awa Tupua. To do this, Te Kōpuka has the specific function of drafting Te Heke Ngahuru (a long-term strategy or plan for the river; its purpose is spelled out in 35). Finally, there are four principles (Tupua Te Kawa, 13a-d) that the strategy drafted by Te Kōpuka and implemented by Te Pou Tupua with the advice of Te Karewao is to be based on. These principles affirm the inalienable relationship between all aspects of the river (creaturely, geomorphological, spiritual, and so on).

This arrangement seems very complicated, and it is. The joint committee, for example, may consist of no more than 17 members, and each must be appointed according to certain rules. Everything, including who counts as iwi and hapū, is highly regulated. All in all,

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this amounts to a new governance framework that is not at all about rights, nor about Nature, nor about guardianship, but about ways of carving out political power in relation to beings that have until now only been part of Māori worlds. The membership of Te Kōpuka is the most telling, as it reunites all actors with some sort of interest in the river, from tourism to resource extraction to the operator of the hydroelectric powerplant already in operation. Nature conservation appears as just another interest, with one representative only. The life of the river in the 21st century, clearly, cannot be thought of in the dualist terms of the settler tradition, nor in Māori terms alone. This Act, together with Te Urewera, are the most detailed and painstaking hybrid arrangement to make use of legal personality to date.

Whether the framework set up in this case will work, and what that may even mean, is to be seen in the long duration of history. Māori know this and do not seem to be under pressure to 'deliver' immediate results, precisely because what may count as a good outcome is entirely up to the durability of the deliberative process inaugurated through the Act. The temporal dimension of the case is very significant, because it is itself based on the rhythms of the surrounding world. It would be absurd to mandate that within a matter of months a centennial history, and the infinitely longer lifetime of the river, would be brought into line by a piece of legislation. Paying close attention to the *time* of the environment imposes a long duration to the legislative apparatus itself. Te Urewera follows the same temporal patience. In its online communication, the board is very careful to stress that results will be seen in time, because the time of the land is what dictates relationships with it.

There is no denying the difficulty of the framework involved in this case and the highly ambiguous nature of what success may mean. From the point of view of the rights of nature, I think that these cases can already be counted as successes, if nothing else because they reveal possibilities inherent in legal personality that were simply absent in the theory. They also demystify the relationship between rights and indigeneity in ways that are extremely helpful going forward. Finally, they show how ontological hybridization may happen without dictating either why it must happen or its precise

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content. In other words, Te Urewera and Te Awa Tupua show how far the law can be pushed and how to bridge the unavoidable generality of Western law with the place-based philosophical traditions that, despite centuries of violent colonialism, still endure.

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