CHAPTER 2

Personifying Indigenous Rights in Nature?

Treaty Settlement and Co-Management in Te Urewera

Brad Coombes
University of Auckland

The Making of New "Rights" and New Legal Persons

Although the Treaty of Waitangi 1840 included protection mechanisms for Māori environmental interests, resource- and conservation-based grievances are numerous within the Treaty settlement process of Aotearoa New Zealand. In 1985, the Waitangi Tribunal was authorized to research and make recommendations on historical claims, broadening the scope and significance of its work, but recently the state has found new ways to circumvent those recommendations. The process has become mired in administrative

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rationalism, an over-emphasis on cultural redress sidelines questions of resource ownership or constitutional reform, and state preferences for corporate governance structures have provoked elite capture of compensation mechanisms.[1] Although the 30 percent of the country that is contained within the conservation estate was initially unaffected by the redirection of the settlement process, latterly Treaty settlements for conservation lands have become contentious. Te Urewera is one of four national parks that has or will become subject to special legislation that personifies landscapes and Māori-landscape relations with the intent to resolve Indigenous land claims while inspiring nature's protection. It remains unclear, however, whether person rights for Te Urewera will be effective for the Māori communities whose Treaty claims provoked those changes. Ngāi Tūhoe and neighboring *iwi* (tribes) claimed that cultural suppression, land loss, and developmental restrictions inflicted contemptible impacts upon them. In a perverse response to that history, the Treaty settlement process implemented person rights for Te Urewera with commitments to retain protectionist conservation, so few Tūhoe attained a right to live or work within their *rohe* (tribal territory). Past negotiations for such resolution mechanisms as co-management in Te Urewera were conflictual, but the new ambiguity in whether Tūhoe or Te Urewera will have primary agency further problematizes collaboration. Redressing a colonial history of national parks requires a rethinking of conservation and development, but local implementation of a rights-for-nature approach represents the veiled continuation of strict protectionism.

Between 1954 and 2014, Te Urewera was a national park and was managed according to the preservationist style of the National Parks Act 1980. Early negotiations for Treaty settlement stalled because the government rejected Tūhoe's ownership demands. Further impasses surrounding land ownership forced the state to consider application of proposed redress mechanisms for the Whanganui River, where person rights were subsequently awarded in 2017. Te Urewera Act 2014 rescinded the national park status and granted Te Urewera the right of "a legal entity,"

with "all the rights, powers, duties and liabilities of a legal person" (section 11(1)). Te Urewera and the Whanganui River "are no longer 'things' over which humans exercise dominion; they are 'persons' with which humans have a relationship."[2] Although represented by a co-management board and two guardians, respectively, they have become legally self-owning.

I argue that the award of person rights to nature as a solution to land claims within national parks may invalidate Indigenous rights to development and self-determination, especially when mixed with the falsely inclusive politics of co-management. The current regard for person rights may also inhibit the project of Indigenous leaders to decenter "rights" as the desired end point of Indigenous activism. Experiments with legal personhood emerged during a confluence of seemingly unrelated processes, but awareness of their intersections is crucial for understanding the limitations of a rights-of-nature approach. First, that personhood emerged at a time of unprecedented dissent toward parks and protected areas may suggest that it is a technique for appeasing dissenting voices or delimiting Indigenous activism. Second, personhood follows the unmasking of co-management as an attempt to salvage preservationist conservation from its contradictory performance and socio-cultural impacts. It is unsurprising, therefore, that in certain national parks person rights are implemented concurrently with co-management. Third, rights-of-nature became prominent at the same time as Indigenous philosophers contested stridently the rights discourses that had dominated land claims settlement until that time.[3]

Many Indigenous scholars have grown wary of rights-making practices as the primary means for achieving Indigenous political agendas. The politics of recognition, false inclusion, and the repressive authenticity that shape claims settlements account for loss of Indigenous patience with rights discourses.[4] This should evoke suspicion about missions to resolve jointly Indigenous peoples' and nature's rights. It has been difficult to achieve either agenda, so problems will surely escalate when trying to achieve both. Yet, Indigenous philosophers also accept that there should be interaction among different types of rights.[5] In the pursuit of

common kinship, they suggest we avoid viewing tensions between the rights-of-nature and human rights in binary terms, but they are also sensitive to how rights-making involves the social construction of identities.[6] Ghosts of the ecologically noble savage and biased expectations of Indigenous support for conservation have triumphed over rights to development in the past.[7] The academy should apply a critical gaze to this new claim that recognizing nature's rights may also address Indigenous rights. It seems, however, that such criticality is often lacking, particularly in Aotearoa. Through repetition of interviews with members of Māori claims committees, I review two phases of debate about co-management in Te Urewera: one before hearings of the Waitangi Tribunal and one after the settlement of Treaty claims. Although person rights were absent from the first phase, they dominated the second era of deliberations. The research confirms the role of personhood in the unjustified continuation of preservationist conservation, even after the Waitangi Tribunal discredited that mode of conservation.[8]

Preservationism Resuscitated

The parks and protected areas approach to conservation has been criticized for two significant failings. First, its human rights abuses have been confirmed, with an expanding list of biopolitical displacements, inter-cultural offences and socio-economic impacts upon neighboring or evicted peoples.[9] Indigenous peoples suffer the most and, despite claims that those outcomes are a legacy of historical harm, associated injustices for Indigenous communities are similar in colonial and neo-colonial times.[10] Forced resettlement of Indigenous communities to address ecological crises, biosecurity dilemmas, and poaching networks is increasing. Hence, application of personhood to resolve jointly nature's and Indigenous rights seems contradictory. Second, strict protectionism emphasizes wilderness preservation, and its inflexible attempts to lock nature in particular states are inapt for the disequilibrium ecologies of the Anthropocene.[11] Reform away from strict protectionism during the early part of this century was short-lived and preservationists

have since moved to prolong the parks and protected areas approach through a politics of appeasement. Both rights-of-nature and co-management are practices intended to resuscitate strict protectionism through purportedly more inclusive and caring governance.

Co-Management: Prolonging the Protected Areas Approach

Rather than performing as a bridge to self-determination, co-management has imposed a globalized rights-making discourse on state–Indigenous conflicts. It has concealed demands for land repatriation and renewal of Indigenous polities, delimiting those agendas within a cultural heritage logic that is compatible with the preservation of natural heritage.[12] The competing objectives of actors involved in co-management shape the case against its inclusion within land claims settlements. The state promotes collaborative management as a reconciliation process that will calm Indigenous protests, allowing for the perpetuation of national parks. Its motivation to pursue co-management is, therefore, a disguised and sometimes contradictory case of biocentrism.[13] Indigenous communities are more interested in land recovery or political resurgence and may therefore understand such forms of reconciliation as a means to control their political activism.[14] The environmental components of claims settlement yield many dilemmas for Indigenous peoples, especially because attacking the colonial or postcolonial state on the basis of a poor environmental record may be framed later as primal support for conservation. That may lock Indigenous communities into a future of limited development, wherein co-management imposes a ceiling on usufruct allowances and any community rights are vulnerable to withdrawal if plans depart from scripted biocentric identities.[15]

The dilemma that apparent acceptance of biocentrism may follow Indigenous consent to co-management has become greater over time. The original vision of co-management to enable joint decision-making among state and local actors has been "conceptually stretched" to accommodate non-local stakeholders and corporate

interests, entrenching the hierarchical governance that co-management was intended to replace.[16] Rather than an equal, *a priori* influence for parties in a state–local dyad, co-management increasingly defaults to *post hoc* consultation or involvement in advisory boards.[17] The outcome is a façade in which claims about inclusion and proof of elitism co-mingle, confounding any Indigenous demand for collaboration. Co-management reconfigures as liberal legitimating power for the nation-state and proof again that the efforts of Indigenous leaders to work within the state apparatus inevitably stray from a decolonial trajectory.[18]

Those problems are acute where historical injustices are the prevailing source of present Indigenous concern. In such cases, fairer "management" of parks may have an ambiguous relationship with accountability for past land loss, genocidal policies, or state assimilation. Yet, because co-management is well-known for ahistorical moments of inclusion in the present, Indigenous leaders are often doubtful about its capacity to address the historical traumas that are their primary concern.[19] The promise of material benefits from co-management seldom generates new work opportunities or development rights, sometimes leading to an Indigenous backlash after implementation of co-management. Yet, "non-recognition" of and failure to deliver the *non*-material benefits that Indigenous peoples anticipate from co-management is also significant.[20] Thwarted expectations that cultural preferences or precolonial governance practices will recommence, or that feelings of insecurity and dislocation will dissolve, lead to *new* conflicts. The potency of Indigenous negotiating power may achieve transactional benefits from co-management despite its weaknesses, but it seldom achieves self-dependence or substantive reform.[21]

The most successful examples of co-management include a step-down from leadership by state actors and, therefore, they no longer resemble co-management as it is known in academic literature.[22] More commonly, retention of final decision-making power with state officials, community-state capacity differences that shadow the persistence of expert-systems, and token inclusion maintain hierarchical governance *after* initiation of co-management. Co-management may reiterate Crown jurisdiction over natural

resources in a way that excludes Indigenous environmental preferences. It unites administrative rationalism with biocentric intent, but any commitment to the biosphere is weak and fails to heed Indigenous teachings about the sanctity of other species or landscapes.[23] Land claims agreements generate forms of citizenship that are intended to demarcate and make governable their subjects rather than implementing citizenship for all creation.[24] Where collaboration is included in such agreements, perpetuation of non-Indigenous styles of conservation often becomes a precondition of settlement provisions. Multiple, competing models are labelled co-management, but they are united by the furtive reassertion of the same preservationism against which co-management was promoted to Indigenous communities as an alternative.

Personhood for Nature: Preservationism Concealed

That person rights and co-management of parks are increasingly implemented in tandem means that Indigenous beneficiaries may confront dual techniques of statecraft that aim to co-opt Indigenous activism and secure a future for preservationism. A principal difficulty for resolving Indigenous interests within a rights-of-nature framework is that the latter is, at best, a form of recognition for nature that may have indirect benefits for Indigenous communities.[25] As a novel form of acknowledgment, personhood may serve as a distraction from, or containment device for, rather than fairly responding to, Indigenous demands. Therefore, it is a rights discourse and an identity politics that Indigenous peoples have already rejected in criticisms of "Indigenous rights" and "human rights" that cannot reauthorize Indigenous leadership.[26] Rights-of-nature emerged first in community lobbying against petrochemical and mining developments in the Global North. Its genealogy and dispersal suggest that academics and NGOs utilized similar vocabularies within rights-of-nature and Indigenous cosmologies of human–nature kinship in the Global South to advance a case for more protected areas there.[27] Although personhood has a unique history in such countries as Ecuador and Bolivia, the way overseas conservation elites valorized rights-of-nature to influence public

debates on Indigenous rights is significant. Interspecies justice is an important counter to colonial or neocolonial resource extractivism, so it is vital for decolonization, but attempts to implement it are easily co-opted within white settler society.[28]

Rights-of-nature default to a further case of ventriloquism, whereby non-Indigenous actors speak for Indigenous peoples and misrepresent their eco-cultural values.[29] Their implementation is understood as a proper approach to managing land claims because it is assumed that Indigenous peoples are archetypal citizens of nature, but that has consequences for their developmental interests. The academy has championed personhood as a solution for treaty claims, but it seldom unpacks the global influences upon, nor engages critically with, rights-of-nature discourses.[30] The risks in applying rights-of-nature reflect the temporal context in which they have become prominent, a time when Indigenous demands for land repatriation are becoming unfashionable. Attempts to discredit Indigenous ownership claims are an important context for the sudden appreciation of personhood approaches, suggesting a zero-sum game where any gains from award of personhood are at the expense of aspirations to repatriate homelands.

Just as co-management is biocentric yet fails to secure Indigenous environmental interests, personhood may only appear to protect Indigenous environmental values. Legal protection for "Pachamama" in Ecuador and Bolivia coincided with a long era of accelerated resource extraction in those countries.[31] For the Rio Atrato, a person-river in Colombia, "when the river would have *locus standi* to be defended against any harm is unclear and has been left to be decided on a case-by-case basis."[32] That uncertainty enabled non-Indigenous corporations to exploit resources of importance to Indigenous communities. Likewise, the higher courts in India quickly annulled a regional court's celebrated award of person rights to parts of the Ganges River system.[33] Those examples of implementation failure confirm the lack of durability in person rights, but they also infer the non-Indigenous precepts upon which they are founded.

Despite the failure of personhood for Indigenous peoples in other countries, gushing approval has characterized appreciation

Table 2.1: Representations of legal personhood in Aotearoa, New Zealand

"A new dawn for conservation management" and "the basis for long lasting transitional justice"[34]
"plural legal systems … a mutually acceptable, innovative solution" and "an interstitial legal structure"[35]
"transcends identity with the Crown and iwi finding a novel way to govern together"[36]
"a powerful precedent" and a "recognition of the inseparable connection between people and place"[37]
"a pluralistic place-based governance framework for implementing biocultural approaches"[38]
"flexible and adaptable" and "allows existing worldviews to be bridged"[39]
"evidence that unity between the Crown and an Indigenous federation is possible" and "a powerful demonstrator of" how "we can build respectful futures"[40]
"ground breaking legislation" that provides "transformative landmarks" and "a new legal era"[41]
"a form of principled compromise" and "demonstrates the possibilities of law acting as a bridge between worlds"[42]

of its capacity to address Treaty of Waitangi claims. The asserted benefits range from transitional justice and positive role models to a platform for social transformation and enhanced ecological citizenship (see Table 2.1). The only other Māori scholar to criticize rights-of-nature maintains that nature's "personality is a Western legal concept [that] comes close to expressing some fundamental ideas from within Māori legal traditions," but it fails to recognize their deeper meaning and value.[43] Allegedly, rights-of-nature reflect Māori-specific ways of relating to landscapes and recognition that an expanded understanding of responsibility is required to resolve planetary crises.[44] Yet, biocentric discourses outweigh Indigenous interests in academic appraisal of rights-of-nature. Personification of nature is most celebrated because it might realize nature's rights, thereby "Improving the Global Environmental Rule of Law," so analysis of its capacity to address Māori concerns is less common.[45]

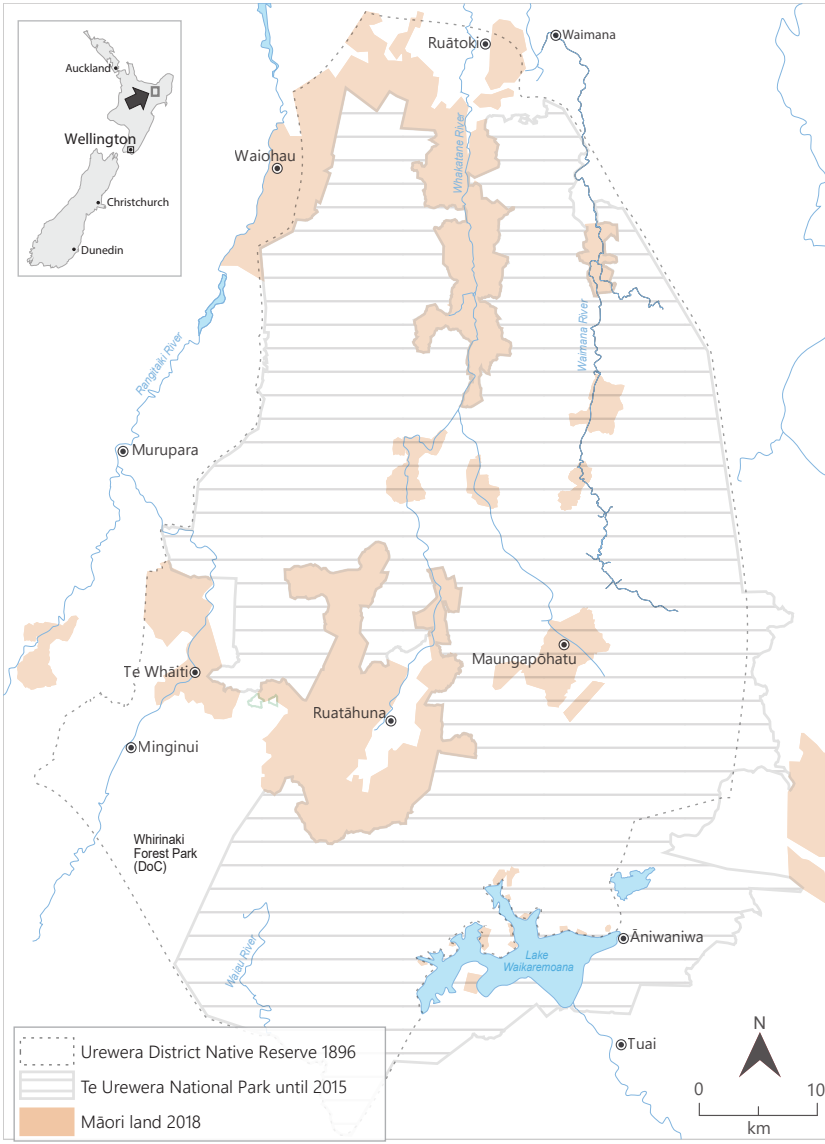
Te Urewera: A Colonial History to Rescind

The Waitangi Tribunal is a permanent commission of inquiry that is authorized to hear and make recommendations on "acts or omissions" of the Crown since 1840. The Treaty of Waitangi includes Māori rights to retain and manage independently their resources. While it provides a template for justice in the resolution of environmental disputes, discord between its English and Māori versions and among its three articles weaken its protective mechanisms. Article II of the Māori version upholds tribal *rangatiratanga* (chieftainship) over lands, resources, and traditional food sources. Contradictorily, the English text of Article I transferred sovereignty to the Queen of England, even though the Māori version relinquished only *kāwanatanga* or limited governance. Crown policies for Treaty settlement generally prohibit the return of conservation lands, so it is difficult to balance appropriately articles I and II in a conservation setting.[46] Restoring *rangatiratanga* is the lead priority for Māori claimants,[47] but as neither co-management nor rights-of-nature reference the person or the function of *rangatira* (chiefs), it is uncertain how either could achieve *rangatiratanga*.

Land repatriation was the main component of Tūhoe's statement of claim, so tribal members were surprised that their claims were later translated into deliberations about rights-of-nature. By 2011, some accepted that the strength of public opinion against Tūhoe ownership of Te Urewera had made that goal unattainable, so there was scope for compromise. Nonetheless, because the illegal acquisition of Tūhoe property reduced the tribe's present land holdings to eight percent of their extent in 1872, forfeit of ownership claims was unanticipated. In the 1860s, land was confiscated at the north and south, even though Tūhoe involvement in the civil wars of that time was minimal.[48] Escaping armies and displaced peoples sheltered within local forests, so the government dispatched its armies to pursue them, and later it punished all parties through land confiscation. Past confiscation is not a legitimate basis for today's conservation, but national will to address ongoing legacies of land loss is negligible.

A Liberal government that was elected at the end of the 19th century experimented with Tūhoe autonomy over remaining tribal lands, leading to the Urewera District Native Reserve Act 1896. The reserve provided for limited self-rule, and it restricted land loss by permitting only a Tūhoe general committee to sell land (Long Title, s. 21). Private and government speculators soon breached those provisions, hopelessly dividing titles for all and restricting Tūhoe to a few land enclaves.[49] Leveraging those conditions, the scenery preservation movement petitioned for a reserve to cover the catchment of Lake Waikaremoana. To settle rival agendas, new laws were passed in 1921 that extinguished the Native Reserve and associated legislation. Land titles were coercively amalgamated in 1927, but with less land confirmed for Tūhoe than it owned in 1921.[50] The government offered new roads for Tūhoe to make best use of fragmented blocks, but it insisted Tūhoe pay for them by defraying costs against lands implicated in the amalgamations. The roads were never completed, but public reserves were established on the new Crown lands, becoming the initial core for Urewera National Park. After extensions, the park overlapped most of the Native Reserve, signifying injustice in conservation and why land retitling was at the forefront of Treaty negotiations.[51]

Parks and protected areas (see Map 2.1) inflicted multiple impacts on local tribes.[52] Strict protectionism outlawed the bird harvests upon which forest peoples were reliant. The earlier title amalgamations resolved only some of the land fragmentation, so protected areas, along with new watershed control and regional planning mechanisms, imposed heavy restrictions on use of the remaining land. There is a matrix of Māori and conservation lands throughout Te Urewera, with the latter surrounding the former and circumscribing whether Tūhoe land can be usable or livable.[53] Park management policies stipulated few provisions to consult with neighbors, so conservation was an insensitive, omnipresent imposition for local Māori. Yet, in research and hearings for the Urewera Inquiry District, inflexible management was much less a focus than land dispossession. Until the passing of Te



Map 2.1: Te Urewera as a spatial contradiction: Native Reserve and National Park. Map: Brad Coombes and Heli Rekiranta.

Urewera Act 2014, return of land was understood as non-negotiable for Tūhoe.[54]

During negotiations, the collaborative models that are used in some Australian parks were evaluated, whereby co-management

also accommodates land transfer to Aboriginal claimants, state payment of rentals to the new owners, and retention of protected areas in perpetuity. The idea of leaseholder co-management was both criticized and appreciated within Te Urewera, with the positive observers commending its basis in land retitling. Meetings were scheduled to apply the "give over, lease-back and co-manage" approach in 2009. While supported by many claimants and governmental representatives, near the end of deliberations Prime Minister John Key unexpectedly rejected the Australian model, stating his concern about the precedent it would establish for other parks.[55] The UN Special Rapporteur on the Rights of Indigenous Peoples criticized the government's *volte-face* and pleaded for it to "reconsider the return of Te Urewera National Park to Ngāi Tūhoe."[56] By 2012, however, all parties understood that ownership transfer had been proscribed from settlement negotiations. Rights-of-nature ascended quickly thereafter and became central to all options for settling the Urewera claims.

Two legal interventions were required to implement personhood and extinguish local Treaty claims. Te Urewera Act 2014 established a legal identity for Te Urewera as a person, and it also determined its rights and the procedures for upholding them. Section 2(c) removed Te Urewera from the jurisdiction of the National Parks Act 1980 and made the former parklands inalienable. The Tūhoe Claims Settlement Act 2014 instituted protocols for relationship-building and identified an asset base to be transferred to Tūhoe. $170 million in cash and Crown properties were included, but the only lands to be returned were outside the former national park. A co-management board will perform the needs of Te Urewera-as-person, and it now operates with a two-to-one majority in favor of Tūhoe.

Along with the two acts of 2014, a Mana Mohutake (self-dependence) policy for health social services and emerging protocols include too many provisions to cover in depth. Those for independence in service delivery are more radical and are more likely to restore the purpose of the Native Reserve.[57] Te Urewera Act 2014 re-centers *Tūhoetanga* (Tūhoeness) within environmental planning and it also reauthorizes Tūhoe approaches to natural

Figure 2.1: Omnipresent conservation: A matrix of Māori land and public forests. Photo: Brad Coombes.

resource management (section 18(2)). The new Urewera Board has a defining role as author of management plans, and a draft of the first was released in 2017. The plan is innovative, with an emphasis on managing human processes rather than the natural entities on which they impact.[58] With the exception of harvesting flora for craft and *rongoā* (medicinal) purposes, however, there is

continuity with previous methods of conservation. Tūhoe individuals appreciate the changes, but many also question whether the intent of their claims can be achieved in the new context.

Personhood for, and Co-Management of, Te Urewera

During 2001 to 2009, I was contracted to provide research support for claims submitted to the Tribunal's Urewera Inquiry District. Subsequently, my research was used throughout the Tribunal's *Te Urewera Report*.[59] The work included archival study into conservation's impacts, along with legal opinions about and overseas experience with co-management. I completed 23 interviews with land managers, claims negotiators, and *kaumātua* (elders). From 2017, several participants contacted me, suggesting that I return to consider whether Treaty settlements had fulfilled local aspirations. Authorization was attained to use recordings for new purposes, and ten of the original participants were re-interviewed. Interviews were conducted with six new participants, so the research presented here is based on 29 interviews with 19 individuals, facilitating comparisons before and after Treaty settlement.

Transferable and Extensible Rights?

Most participants were ambivalent about rather than openly critical of the new arrangements. To explain their openness to compromise, they raised the threat of invasive competitors to such cultural keystone species as kererū (native woodpigeon, *Hemiphaga novaeseelandiae*) and kiwi (the "national bird," principally *Apteryx mantelli*). As Tūhoe have a *whakapapa* (genealogical) relationship with those species, personhood for Te Urewera has some merit: "we know our whakapapa and where kiwi and kererū are located in it, so we had to step down for them."[60] The only species that thrived during 30 years of claims research, deliberations, and hearings were invasive and "with each draft settlement we rejected, the winner was the possum and the loser was Te Ngahere [The Forest]."[61] Compromise for the benefit of *taonga*

(treasured) species extended to co-management because "although we never agreed to co-management if offered separately from ownership, delays while waiting for the best governance model benefitted only pest species."[62] Most participants were gratified that new co-management provisions extend beyond advisory functions and include a majority for Tūhoe on the Urewera Board. Nonetheless, even "the best approaches to collaboration … will fail if isolated from the issue of land ownership."[63]

Before finalization of Treaty settlements, local Māori were wary about whether co-management would disrupt or dilute land claims (see Table 2.2(a)). They wrestled with the potential for co-option and with the possibility that co-management would communicate validity for the status of conservation practices and public lands. After granting of personhood, some are more worried about those possibilities because it is unclear whether Te Urewera's new rights are transferable to them. Land ownership remains the central issue, and the fabrication of personhood makes achieving that more challenging. As confirmed in Table 2.2, Māori leaders vacillated between endorsement of how rights-of-nature could authorize their kinship with Te Urewera and thoughts of betrayal. They feared that the combination of co-management and rights-of-nature was a final, insuperable barrier to the restoration of Māori land ownership. Echoing the ideas in Table 2.2(b)(ii), many considered metaphors of slavery or liberation in relation to personhood for Te Urewera, noting that land use or ownership will now be associated with enslavement and may become, therefore, a public relations difficulty.

It is more difficult to fight against the idea that "nobody owns Te Urewera" than it is to fight against Crown ownership. The notion that Te Urewera is self-owning confronts older ideologies that *everybody* owns the conservation estate. The contradictions in the "fiction of personhood" will inevitably "come unstuck, and in their wake will be a more difficult idol to dislodge from public consciousness."[64] National agendas, the public good, and the rights of all typically prevail over Māori rights, so personhood is too resonant with the past for some. Like all Treaty agreements, this is a "full and final settlement"[65] and Tūhoe will likely receive

Table 2.2: The transferability and extensibility of person rights

(a) 2000–2009 Interviews	(b) 2017–2020 Interviews
(i) "Co-management might work if it is set within a program of ownership transfer, but never if the two are separated. They do that right in Australia, but I don't see the will to do it here." (Claims Negotiator, March 19, 2009)	(i) "I flip from 'this new legal person thing is just what we wanted' to 'it's a gutless attempt to make it impossible for us to own our lands.' More respect for a living spirit of Te Urewera is only *one* thing we wanted." (Tūhoe Resident, May 22, 2018, speaker's emphasis)
(ii) "Co-management is temporary, a transitional procedure, as one day we will have our lands back. We're disinterested in collaboration unless it's part of taking back our land." (Kaumātua, October 12, 2002)	(ii) "So now, if we bring up the fundamental issue—that being theft of our ancestral lands—will we be treated as slavers? Future generations won't listen to slavers." (Kaumātua, October 13, 2018)
(iii) "We want something more than the sharing of management. After all, the claim is mostly about who is the rightful owner of Te Urewera and its resources." (Claims Negotiator, October 16, 2001)	(iii) "Ultimately, whether we get anything from the status of Te-Urewera-as-Person comes down to the work of the new Board, so it's no more certain or fair than any other form of co-management." (Claims Coordinator, February 15, 2020)

Figure 2.2: Unofficial sign near the Waimana entrance to the former Urewera National Park. Photo: Brad Coombes.

no further opportunities to own ancestral lands. Hence, many interviewees associated personhood with "diversionary tactics intended to bypass our ownership claims."[66]

Enforceable and Effective Rights?

Before joint implementation of co-management and rights-of-nature, some leaders feared that co-management was a manipulative, artificial construction of consent. In Table 2.3(a), the probability that co-management will be used to manage protest rather than to implement Māori rights is clearly articulated, as is the possible default to Ministerial decision-making in times of deadlock and the difficulty in handling Māori diversity. After conclusion of Treaty settlements, however, there is greater concern about how enforceable tribal rights can be. Those rights are scattered across separate acts of parliament, so policy fragmentation may deny Māori interests. Of most concern, though, was that Te Urewera's new rights are not directly Tūhoe's rights (see Table 2.3(b)(ii)). Rights-of-nature seem relevant to some Māori interests, but emancipation for Te Urewera is no direct honoring of the Treaty for Tūhoe. Some feared that filtering Tūhoe rights through Te Urewera's agency was a weak form of tribal influence.

Tūhoe views on collaborative management are broad, but a trend is observable. If co-management is tied to land repatriation, it is commended; if not, it is viewed as token and dishonest (Table 2.3(a)). Tūhoe representatives understood that inherent problems within co-management would persist irrespective of whether it is mixed with rights-of-nature. Although there is a two-thirds Māori majority on the Urewera Board, all members must "promote unanimous or consensus decision making."[67] If that cannot be achieved, the Board is required to seek "a minimum of 80%" consensus and assent by two of the three appointed members."[68] Thus, "because two thirds is less than 80 percent, we don't really have a majority" and "where's the *rangatiratanga* when consensus decisions must be reached within a context of rights for nature?"[69] The influence of personhood inevitably restricts the

Table 2.3: Enforceability and effectiveness

(a) 2000–2009 Interviews	(b) 2017–2020 Interviews
(i) "I worry that there isn't a model of joint management that can handle our diversity. Tūhoe is the main tribe, but it's divided into eight *hapū* (sub-tribes) and there are other tribes with overlapping interests." (Tūhoe Planner, March 15, 2004)	(i) "Special purpose laws like Te Urewera Act are limited. They rarely make it into the news after they're passed. We lost some leverage by abandoning the *National* Parks Act for a new, entirely *local* Act." (Policy Advisor, January 27, 2019, speaker's emphasis)
(ii) "Co-management doesn't realize its promises. You get stalemate between governmental reps and us Māori, then a Minister uses that as an excuse to take a casting vote. That's worse than *status quo* because it'll look like we were involved." (Kaumātua, February 17, 2007)	(ii) "It's confusing. Who's in charge here? The Urewera Board will 'express and perform' the person rights and judge on them. Are we boss or is Te Urewera boss? When there's confusion like that, you can be sure that neither of us are in control." (Tūhoe Politician, February 12, 2019)
(iii) "If you collaborate on a decision, it's much harder to disagree or revisit it later. Joint management is a sophisticated way of handling protest without resolving its causes." (Kaumātua, September 3, 2001)	(iii) "We had land titles and rights vested in the unliving before. 'Ancestors in common' was the Native Land Court way—they didn't front up back then. The new 'Person' can't front now." (Land Administrator, July 19, 2018)

range of decisions that the Board can make, so Māori participation may self-collude against Māori interests.

Seen in historical perspective, the vesting of Māori rights in figures who cannot materialize within public deliberations is a false innovation. As recorded in Table 2.3(b)(iii), "ancestors in common" were used within the country's land courts to adjudicate among Māori claims for title to disputed land blocks. Multiple kinship groups valued intensely the small land blocks that survived the amalgamations of the 1920s, so determining their

shareholders was difficult. In part, the Native Land Court vested the lands in long-dead ancestors as an expedience, so that it could evade responsibility for resolving competing claims. Those ancestors could not, of course, arrive in court to negotiate directly for local rights, and neither will river- nor forest-persons and other legal personalities of nature. There were no effective champions for the remnant land blocks and, despite their significance, for decades they were used and abused as parkland. Many fear that similar outcomes will emerge under rights-of-nature.

Relationality or Biocentrism?

Before the 2014 settlement, some locals favored co-management approaches that aimed to resolve jointly developmental needs and environmental protection (Table 2.4(a)(i)). Accordingly, some models of co-management were acceptable because they recognized that the interests of Tūhoe and Te Urewera overlap (Table 2.4(a)(iii)). Tūhoe claims negotiators envisioned potential for integration and relationality in co-management as a possible antidote to the singular, biocentric intent of preservationism. Now, however, their developmental prospects are sequestered within separate legislation and, although person-focused, the Urewera Act is a biocentric paradox: "It's not clear what Te Urewera Act was intended to do for Te Urewera, but it's even less clear what is does for Tūhoe, and the separation of the two laws makes Tūhoe rights even less obvious."[70] Australia's leaseholder co-management was considered more appropriate for balancing multiple agendas than was Aotearoa's personhood co-management.

In Table 2.4(a), objections to possible duplicity in collaboration are juxtaposed against multiple, albeit conditional, instances of support. It was the *combination* of co-management and personhood that elicited a more condemnatory stance against the former (Table 2.4(b)). A Tūhoe politician concludes that "at first we were attracted to co-management," but when "watered down by person rights, well, society won't let you harvest, farm or develop a person."[71] The separation of the Tūhoe Claims Settlement Act from the Te Urewera Act is revealing. It mimics the failure of park

Table 2.4: From relational to biocentric conceptions of rights

(a) 2000–2009 Interviews	(b) 2017–2020 Interviews
(i) "Joint management is for show and doesn't provide an opportunity to properly balance the rights of nature with the rights of Indigenous peoples. Co-management is there to serve the purpose of conservation, not to secure Māori rights." (Board Chair, January 18, 2003)	(i) "Policy fragmentation restricted us, but now there's more of it. The TCSA [Tūhoe Claims Settlement Act] is about commercial redress and the Urewera Act is all cultural or biological protection. There's no balance." (Claims Negotiator, March 7, 2019)
(ii) "Co-management is the biggest insult of all. For years they just wanted us to die off … They don't understand that we need to live here, and not just preserve the forests." (Kaumātua, November 17, 2002)	(ii) "TCSA is in our name but provides only economic opportunities *outside* our *rohe*. Te Urewera Act is not in our name, but it denies any development *in* our *rohe*." (Tūhoe Ecologist, September 15, 2017, speaker's emphasis)
(iii) "Joint management will work right if we remember that what's good for Tūhoe will also be good for Te Urewera. I think it can strike the right balance between economic rights and conservation. But just because it can do that, doesn't mean it will do that. It's too risky." (Tūhoe Planner, March 15, 2004)	(iii) "The Act may be a good thing for Te Urewera, but what it does for Tūhoe is largely unspecified and uncertain. The charade where rights are in the name of a nature that cannot itself stand to be heard is more of the same old thing." (Land Administrator, July 19, 2018)

management the world over to reconcile conservation with development. It is notable that the few land parcels or development rights that were offered in the Tūhoe settlement are located outside ancestral boundaries: "Within our *rohe*, we have almost nothing but conservation to look forward to."[72] Many interviewees commented on the historical repudiation of Tūhoe development through Crown intervention to disrupt tribal tourism or to prevent land-use conversion. Some understood legal personhood as a continuation of such restrictions because "it's the same type of

denial, or maybe it's worse because any resource use will now be scorned as desecration of a living being."[73]

One commentator argues that the Te Urewera Act abandons Western conceptions of wilderness preservation that are core principles of park administration in Aotearoa.[74] However, his conclusion overlooks how much of the National Parks Act 1980 has followed Te Urewera into Te Urewera Act 2014. Table 2.5 suggests there were few benefits from removing Te Urewera from the outdated Parks Act because its objectives and methods of conservation are near identical to those in Te Urewera Act. Commitments to protect cultural heritage and implement *Tūhoetanga* are new, but preservationism overwhelms those provisions as well as any benefits in co-management. That strict protectionism endures under personhood was a common topic for the second round of interviews. Participants noted how "elite sports and recreation were influential before" and that representatives of those pastimes "championed the rights-of-nature approach because it impacted the least on them."[75] White privilege was invested in the few human activities that are tolerated under the National Parks Act, but it remains dominant in a governance system now led by Tūhoe. The tribe "battled the scenery preservation and recreational crowd since the early 1900s, but we've never been further from victory in that battle than we are now."[76]

Preservationism Redux

The Urewera case represents a dual setback for Māori authority because the encumbrances of person rights are mixed with the contradictions in co-management. Land confiscations, the illegal termination of the Native Reserve, coercive amalgamation of land blocks, and a history of restrictive land-use policies are grave matters with lasting impacts. It is ahistorical to suggest that transcultural collaboration of any form can remedy the brutalities of land loss in the colonial past, but collaboration within the context of legal personhood amplifies such concerns. In a decision-making scenario where the rights-of-nature must come first, it is inevitable

that the charge of co-option will adhere to Treaty settlements. Even though the Urewera settlement includes an Indigenous majority influence on local conservation policies and restores Māori approaches to environmental management, neither of those advances satisfy *tangata whenua* (people of the land) objectives to reclaim land portfolios and political influence. Both person rights and co-management generate ambiguous agency, and the combination of the two is further indefinite. They divert attention from a long history of Māori activism to recover ancestral lands, so they are best framed as state strategies of dispute management that include little scope for Indigenous self-determination.

It is important not to overstate the manipulative characteristics of this amalgam of co-management and legal personhood. In their kin-centric worldviews, it is authentic for Tūhoe and other *iwi* to conceive of Te Urewera as an ancestor, so person rights have some cultural legitimacy. The threats of invasive species, climate change, or others' perceived use rights ensure that *some* Māori objectives are congruent with biocentric management. Nonetheless, it is also important to recognize that the genealogy of legal personhood is associated with a globalized rights discourse: despite similarities, it is not an endogenous expression of Tūhoe's affection toward Te Urewera. Indeed, "improving the health of Tūhoe and Te Urewera is ultimately about reinstating *aroha* (love) more than restoring Tūhoe land ownership," but the only acceptable path forward "is to do things in the right order [and not to] pack multiple and competing objectives into one instant of Treaty settlement."[77] That speaker, like many of the interviewees, accepted that there could be a valid future for a rights-of-nature approach, but that it must *follow* land claims settlement rather than replace it. As Treaty settlements at Te Urewera were not ordered sequentially, local grievances about conservation cannot be resolved in a "full and final" manner, and "person rights were the best of the many bad options that were put to us, but not the just option."[78] Claims about joint resolution of Indigenous and nature's rights are naïve, and they are not being implemented with a genuine commitment to Treaty rights or tribal needs.

Table 2.5: Continuity of preservationist discourses in legislative purpose statements*

National Parks Act 1980	Te Urewera Act 2014
"*4 Parks to be maintained in* ***natural state****, and* public *to have* ***right of entry*** … (1) … the purpose of preserving in **perpetuity** as national parks, for their **intrinsic worth** and for the **benefit, use, and enjoyment of the public**, areas … that contain **scenery** of such **distinctive quality, ecological systems**, or **natural features** so **beautiful, unique**, or **scientifically important** that their preservation is in the **national interest**. (2) … national parks shall be so administered … that (a) they shall be preserved … in their **natural state** (b) … the native plants and animals of the parks shall … be preserved … (e) … the public shall have **freedom of entry and access** … so that they may receive … **inspiration, enjoyment, recreation**, and other benefits … *5 Indigenous plants and animals to be preserved* (1) No person shall … **cut, destroy, or take** … any plant or part of a plant that is indigenous … (2) No person shall … disturb, trap, **take, hunt, or kill** any animal that is indigenous … *14 Wilderness Areas* (1) The Minister may … set apart any area of a park as a **wilderness** area … (2) … its **indigenous natural resources** shall be preserved …"	"(3)(1) Te Urewera is ancient and enduring, a **fortress of nature**, alive with history; its **scenery** is abundant with mystery, adventure, and remote **beauty** … (5) For Tūhoe, Te Urewera is their ewe whenua, their place of origin and return, their **homeland** … (8) Te Urewera is also prized by all New Zealanders as a place of **outstanding national value** and **intrinsic worth** … for its … **biodiversity … cultural heritage**, its **scientific importance**, and for **outdoor recreation** and **spiritual reflection** … 4 *The purpose of this Act* is to establish and preserve in **perpetuity** a legal identity and protected status for Te Urewera for its **intrinsic worth**, its **distinctive natural and cultural values** … and for its **national importance** … to—(a) … maintain the connection between Tūhoe and Te Urewera; and (b) preserve … the natural features and **beauty** … the **integrity of its indigenous … biodiversity**, and its historical and cultural **heritage**; and (c) provide … a place for **public use** and enjoyment, for **recreation**, learning, and **spiritual reflection** … *5 Principles* (1) … (a) Te Urewera is preserved in its **natural state** (b) the indigenous ecological systems and **biodiversity** of Te Urewera are preserved (c) Tūhoetanga, which gives expression to Te Urewera, is valued and respected …"

***Note:** Purposes of conservation in **boldface**; approaches to conservation underlined (author's emphasis).

Figure 2.3: Artist's installation at the Whakatane entrance to the former Urewera National Park. Photo: Brad Coombes.

Perhaps the academy's uncritical fascination with rights-of-nature is grounded in their apparent honoring of Indigenous eco-cultural values. Many Indigenous scholars call for a greater sense of kinship with non-human others, so concurrent resolution of nature's rights and Indigenous rights is arguably compatible with essential Indigenous philosophies.[79] Rather than something new, however, nature's personification has always been co-produced with environmentalism and, historically, it saturates the national parks project. From the Crying Indian motif within North America wilderness preservation to the erroneous understanding that Māori "gifted" several mountains so they could become national parks, Indigenous environmentalism has long been recast to support non-Indigenous agendas. Past, romanticized depictions of nature as earth mother who cares for her Indigenous children normalized the idea that Indigenous communities will forego their right to development. In Te Urewera, Tūhoe must adopt a new identity as manager of a sentient being, but with miserly compensation for past or future loss of economic opportunities. In Aotearoa, there is a tendency to regard personhood as a good outcome because it is novel and innovative.[80] In retrospect, though, there is nothing unique in how rights-of-nature are inserted into, and disrupt, a history of Māori activism to recover their lands. I have argued that legal personhood in Aotearoa reproduces the same forms of biocentrism that have denied Indigenous rights in

the past. It is a new trajectory for old preservationism, and it is a belated attempt to save the ideal of national parks.

Notes

[1] Mutu, "Smoke and Mirrors."
[2] Geddis and Ruru, "Places as Persons," 299.
[3] Coulthard, *Red Skin, White Masks*.
[4] Borrows, *Freedom and Indigenous Constitutionalism*; Coulthard, *Red Skin, White Masks*.
[5] Valverde, "Persons and Their Acts."
[6] Whyte, "Settler Colonialism."
[7] Bedriñana, Umaña, and Martín, "'Living Well.'"
[8] Waitangi Tribunal, *Te Urewera*.
[9] Duffy et al., "Militarisation of Conservation."
[10] Athens, "Indivisible and Living Whole"; Lunstrum and Ybarra, "Deploying Difference."
[11] Crotty et al., "Foundation"; Newman, "Disturbance Ecology."
[12] Grey and Kuokkanen, "Indigenous Governance."
[13] Coombes, Johnson, and Howitt, "Indigenous Geographies I."
[14] Palmer and Pocock, "Aboriginal Colonial History."
[15] Witter and Satterfield, "Ebb and Flow."
[16] Pearson and Dare, "Framing Up."
[17] Young et al., "Consulted to Death."
[18] Elliott, "Indigenous Resurgence."
[19] Ayers, Kittinger, and Blaich-Vaughan, "Whose Right to Manage?"
[20] Thondhlana et al., "Non-Material Costs."
[21] Diver, "Co-Management."
[22] Webster, "This Land Can Sustain Us."
[23] Nadasdy, "First Nations."
[24] Borrows, "Challenging Historical Frameworks."
[25] Tola, "Pachamama and Mother Earth."
[26] Correia, "Reworking Recognition."
[27] Espinosa, "Intelligibility."
[28] Deckha, "Anthropocentric Legal Systems."
[29] Martínez Novo, "Ventriloquism."
[30] Rawson and Mansfield, "Producing Juridical Knowledge," 100.
[31] Bétaille, "Rights of Nature."
[32] Cano-Pecharroman, "Rights of Nature," 8.
[33] Knauß, "Human Stewardship."

[34] Ruru, "Recognition of Māori Law," 216 and 218.
[35] Ruru, "Listening to Papatūānuku," 214 and 221.
[36] Geddis and Ruru, "Places as Persons," 301 and 315.
[37] Jones, *New Treaty, New Tradition*, 98.
[38] Iorns Magallanes, "From Rights to Responsibilities."
[39] Iorns Magallanes, "Environmental Rule of Law."
[40] Ruru, "Treaty in Another Context," 313 and 324.
[41] Charpleix, "Whanganui River," 20 and 26.
[42] Frame, "New Zealand," 51.
[43] Iorns Magallanes, "Environmental Rule of Law," 84 and 90.
[44] Lyver et al., "Building Biocultural Approaches," 5.
[45] O'Donnell and Talbot-Jones, "Creating Legal Rights for Rivers," 5 and 6.
[46] OTS, *Ka Tika a Muri*.
[47] O'Sullivan, "Māori Self-Determination."
[48] Binney, *Encircled Lands*.
[49] Waitangi Tribunal, *Te Urewera*.
[50] Wazl, *Waikaremona*.
[51] Coombes and Hill, "Na Whenua, Na Tūhoe."
[52] Waitangi Tribunal, *Te Urewera*.
[53] Coombes, *Conservation Ecologies of Te Urewera [II]*.
[54] Higgins, "Tūhoe-Crown Settlement."
[55] Sanders, "Beyond Human Ownership?"
[56] HRC, "Te Tiriti O Waitangi."
[57] Stephens, "Tūhoe-Crown Settlement."
[58] Geddis and Ruru, "Places as Persons."
[59] Waitangi Tribunal, "Te Urewera."
[60] Kaumātua, Interview, May 23, 2018.
[61] Claims Manager, Interview, January 19, 2019.
[62] Interview, Claims Negotiator, November 22, 2018.
[63] Interview, Land Administrator, February 19, 2018.
[64] Interview, Kaumātua, July 11, 2018.
[65] Tūhoe Claims Settlement Act 2014, s. 6(2)(f)
[66] Interview, Tribal Policy Advisor, January 27, 2019.
[67] Te Urewera Act 2014, s. 31(1)(b)
[68] Te Urewera Act 2014, s. 36(1)(a),(b)
[69] Interview, Kaumātua, October 13, 2018.
[70] Interview, Claims Coordinator, February 15, 2020; see also Table 2.4(b)(iii).
[71] Interview, February 12, 2019.
[72] Interview, Tūhoe Resident, May 22, 2018; Table 2.4(b)(ii).

[73] Interview, Social Worker, November 13, 2018.
[74] Strack, "Land and Rivers."
[75] Interview, Tūhoe Politician, February 12, 2019.
[76] Interview, Kaumātua, July 11, 2018.
[77] Interview, Kaumātua, October 13, 2018.
[78] Interview, Social Worker, November 13, 2018.
[79] McGregor, "Reconciliation and Environmental Justice."
[80] Frame, "New Zealand."

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