

**Managing People for the Benefit of the Land:
Practicing Earth Jurisprudence in Te Urewera, New Zealand**

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Abstract

In 2014, New Zealand's Te Urewera Act was adopted, recognizing the forest Te Urewera as a legal person with rights. This law emerged from treaty settlement negotiations resolving historical Treaty of Waitangi claims of the Tūhoe Iwi (tribe) in relation to Te Urewera, their homeland. This article examines the Te Urewera case to consider the relationship between rights of nature and Indigenous rights, and its role in translating Indigenous cosmologies into Western legal frameworks.

The Te Urewera Act is an interesting case of rights of nature because it did not arise from rights of nature activism. In contrast to Ecuador and Bolivia, where Indigenous movements played a central role in promoting rights of nature, New Zealand's Tūhoe negotiators express concern over the emphasis on rights, a Western legal construct that historically has been used to marginalize Māori people. Rather, legal personhood was proposed by Crown negotiators as a tool for overcoming specific obstacles plaguing settlement negotiations.

After providing a brief history of Te Urewera, the article traces the process producing New Zealand's pioneering rights of nature law and discusses what it means for New Zealand's government and the Tūhoe Iwi. It then describes the law's implementation to show one example of what it looks like to put rights of nature into practice. By comparing this new approach with

how Te Urewera was previously managed by New Zealand's Department of Conservation, the article addresses how rights of nature laws can produce different outcomes from conventional environmental laws based on Western notions of conservation.

While “rights of nature” is a foreign concept to many Indigenous groups, the Te Urewera case illustrates how rights of nature laws can be compatible with Indigenous rights, like self-determination and preservation of culture, particularly when Indigenous customs and values are consistent with the principles of Earth Jurisprudence. In such cases, rights of nature legal provisions can serve to translate Indigenous cosmovisions regarding humans' relationship to nature into Western law and institutions, albeit imperfectly. In Te Urewera, legal personhood provided a mechanism for removing the pre-existing legal framework that treated nature as an object to be exploited for human benefit, replacing it with a vision of Te Urewera as a living, spiritual being with intrinsic value. The Te Urewera Act also empowered the Tūhoe to retake their traditional place as *kaitiaki*, or guardians of Te Urewera. This created space for the Tūhoe to begin the long process of recovering ancestral knowledge, customs, and practices to reconnect the people to the land. In doing so, they provide one example of how Earth Jurisprudence can be practiced to promote human wellbeing through a more ecologically sustainable approach.

Introduction

In 2014, New Zealand's Te Urewera Act was adopted, recognizing the forest Te Urewera as a legal person with rights. This law emerged from treaty settlement negotiations resolving historical Treaty of Waitangi claims of the Tūhoe Iwi (tribe) in relation to Te Urewera, their homeland. The Te Urewera Act gained international recognition for its provision that recognizes

the forest as a legal person with “all the rights, powers, duties, and liabilities of a legal person” (s 11(1)). It also recognizes the Tūhoe view of Te Urewera as a living, spiritual being with its own *mana* (spiritual authority) and *mauri* (life force) (s 3(2)). The Act also requires guardians to be appointed and obliges them to represent the forest in both legal and policy arenas. These guardians are embedded in a new governance system charged with managing the ecosystem in a way that ensures the forest’s health and wellbeing. This gives the ecosystem a voice in decision-making processes regarding governance in the ecosystem, allowing rights of nature to be protected proactively, reducing the need to turn to the courts.

The Te Urewera Act provides an interesting lens for examining rights of nature and its relationship to indigenous rights because it did not arise from rights of nature activism. In contrast to Ecuador and Bolivia, where Indigenous movements played a central role in promoting rights of nature, New Zealand’s Tūhoe negotiators did not advocate for rights of nature. Indeed, they regularly express concern over the emphasis on rights, a Western legal construct that has historically been used to marginalize Māori people. Rather, legal personhood was proposed by Crown negotiators as a tool for overcoming specific obstacles plaguing settlement negotiations. However, the Te Urewera Act’s rights of nature provision provided a mechanism for removing the existing Western legal framework and creating space for the Tūhoe people to restore their traditional role as *kaitiaki*, or guardians of Te Urewera, and begin to recover their ancestral knowledge, customs, and practices to reconnect their people to the land.

In this article, I trace the process that produced New Zealand’s pioneering rights of nature law and discuss what it means for New Zealand’s Crown government and the Tūhoe Iwi. I then describe the law’s implementation over the last five years to illustrate one example of what it looks like to put rights of nature into practice. By comparing this new approach with how Te

Urewera was previously managed by New Zealand's Department of Conservation, I engage the question of how rights of nature laws can produce different outcomes from conventional environmental laws based on Western notions of conservation.

The article draws on scores of in-depth interviews with members of the Crown and Tūhoe negotiating teams, government officials, Tūhoe tribal leaders, and the Tūhoe people who are serving as guardians of Te Urewera and are implementing the new governance structure created from the Te Urewera Act. These interviews were conducted during fieldwork in New Zealand in 2016 and 2019, during which time I also collected primary documents and observed the guardianship arrangement in practice.

Rights of Nature, Earth Jurisprudence, and Indigenous Cosmovision

It is no coincidence that Ecuador, Bolivia, and New Zealand were the first three countries to adopt national laws recognizing rights of nature. These laws resulted from windows of opportunity in the mid-2000s for Indigenous groups to influence laws governing how humans relate to nature (i.e., the writing of new constitutions in Ecuador and Bolivia and treaty settlements in New Zealand; see Kauffman and Martin 2018). In all three cases, Indigenous cosmovision regarding humans' relationship to nature was translated into Western law as rights of nature legal provisions. This may seem surprising given that "rights" is a non-native legal concept concerning to many Indigenous cultures, including the Māori. To understand this puzzle, it is important to distinguish between two concepts that are often conflated: rights of nature and Earth Jurisprudence.

The term “rights of nature” is often used to refer to two distinct things—a legal philosophy and the specific legal provisions meant to codify that philosophy. The legal philosophy and underlying principles behind rights of nature is more accurately known as Earth Jurisprudence. Earth Jurisprudence is a philosophy of law and human governance that argues that human systems—legal, governance, economic, etc.—should be designed to conform with the way the natural world actually works, rather than trying to force nature to conform to human will.¹ It is based on the recognition that humans are not separate and apart from nature, but rather are inextricably part of a web of life in which all elements of nature are interconnected and interdependent for their wellbeing. As Liz Hosken writes:

the laws we must comply with, that we must live by, are the laws that govern life on Earth. By complying with nature’s laws and codifying these in institutions through which we govern our lives and societies, we contribute to the dynamic equilibrium upon which the health and the wellbeing of all depends...Earth jurisprudence recognizes that we are born into a lawful Universe, of which our planet is a part; that Earth is the ‘Primary Text’, the source of the laws that govern all of life, including our own... Jurisprudence as a term goes beyond narrow conceptions of the law. It is about how we live and govern our lives in their totality and, most importantly, in relation to nature (3).

Earth Jurisprudence implies several principles for how humans should act in regards to nature. Rather than exponential growth in consumption and production, Earth Jurisprudence prioritizes maintaining balance and a dynamic equilibrium within healthy ecosystems,

encapsulated by the catchphrase “living in harmony with nature.” Recognizing that human wellbeing is dependent on the wellbeing of ecosystems that provide the conditions for life, Earth jurisprudence places the wellbeing of all members of the biotic community (including humans) ahead of human self-interest alone.

In a narrow sense, “rights of nature” refers to specific legal provisions that recognize ecosystems as subjects with rights, rather than objects merely to be exploited. Rights of nature is certainly not the only way to codify the principles of Earth Jurisprudence. However, it is how Earth Jurisprudence is increasingly being expressed in Western legal systems.² Such laws are based on the idea that market structures treating nature as a set of resources (objects) for human exploitation are a root cause of many leading problems, from climate change and biodiversity loss, to poverty and disease. Consequently, rights of nature laws are often meant to balance property rights with the rights of all living things to exist and live in a healthy, sustainable environment.³

I highlight the difference between rights of nature laws and the underlying Earth Jurisprudence philosophy to clarify why so many rights of nature laws are associated with the actions of Indigenous groups, including the Tūhoe who are wary of a Western rights-based framework. Many Indigenous groups, including the Tūhoe, derive their customary laws from the laws embedded in their ancestral lands, with which they have an intimate, intergenerational relationship. In order to comply with Earth’s laws, Indigenous communities have developed sophisticated ways of ensuring each generation understands the lawfulness (i.e., natural order) of the world they are born into. The Tūhoe experience shows that rights of nature laws can be a Western legal tool for facilitating Indigenous peoples’ ability to restore their customary practices and traditional relationship with the land, which are consistent with the principles of Earth

Jurisprudence. The following case study illustrates the potential compatibility between Indigenous cosmovision, Earth Jurisprudence, and rights of nature legal provisions, and shows what Earth Jurisprudence can look like in practice.

History of Te Urewera

Te Urewera is a forested, hilly ecosystem covering about 821 square miles (2,127 km²) in the North Island of New Zealand. It is the historical homeland of Ngāi Tūhoe, a Māori iwi (tribe). The Tūhoe people traditionally relied on the forest for all their needs, and they consider the mountain Maungapōhatu to be sacred. The Tūhoe claim to be descended from the rugged ranges of Te Urewera and the white mist clouds that cover them, earning them the nickname, “children of the mist” (*Nga Tamariki o te Kohu*).

Because of Te Urewera’s remote location, the Tūhoe people had little direct contact with European settlers until the 1860s. They did not sign the 1840 Treaty of Waitangi, an agreement between the British Crown and about 500 Māori chiefs from the North Island, meant to establish British sovereignty over the island. While the Tūhoe never signed the treaty, the Crown government nevertheless assumed sovereignty over their territory.⁴ The Tūhoe have been struggling for self-determination (*mana motuhake*) since the 1860s, when the Crown first came to Te Urewera.

During the 1860s-1870s, Te Urewera became the site of repeated brutal invasions by the Crown military pursuing Māori rebels who took refuge in Te Urewera’s remote forests. Facing famine as a result of the Crown’s scorched earth tactics, Tūhoe leaders agreed to hand over rebels in exchange for the Crown respecting Tūhoe’s internal autonomy.⁵ However, the

government's promise of self-government was never realized.⁶ During the 1920s, New Zealand's government systematically acquired and consolidated land in and around Te Urewera. By the 1930s, the Tūhoe had lost all but 16 percent of their historic lands, most of which was unsuitable for farming.⁷ Without sufficient land to support their population, large numbers of Tūhoe moved out of the area. In 1954, the government established Te Urewera as a national park to be managed by the Department of Conservation. This restricted the Tūhoe people's access to customary resources and obstructed their ability to develop lands adjoining or enclosed by the Park. Consequently, most Tūhoe people (roughly 45,000) live outside Te Urewera. Many of the roughly 5,000 Tūhoe that remain suffer from severe socio-economic deprivation.

The Origins of Te Urewera's Rights of nature Law

During the 1990s, New Zealand's government began negotiating settlements of historical claims with individual iwi. Although the Tūhoe never signed the Treaty of Waitangi, they decided that participating in the treaty settlement process was the best available way to pursue their goal of self-determination and redress for historical wrongs. In 2007, the roughly 30 Tūhoe hapū (clans) authorized a negotiating team (*Te Kotahi ā Tūhoe*) to conduct Treaty negotiations on behalf of the entire iwi.⁸ Tūhoe Iwi members spent a great deal of time developing their fundamental objectives before negotiating. They identified three elements necessary for an agreement: (1) the return of Te Urewera; (2) autonomy for Tūhoe management of Te Urewera; and (3) the maximum amount of redress allowed by the Crown.⁹

Crown-Tūhoe negotiations began in 2008, and initially dealt with the Tūhoe demand for return of Te Urewera, which the Crown interpreted as a conflict over title and ownership. Te

Urewera's status as a national park greatly complicated the settlement process. Non-Māori New Zealanders (Pākehā) are famously proud and protective of their national parks, and for a time the government took negotiation of national park land off the table.

The Crown initially proposed a “gift-back” scheme that had worked in some earlier settlements with other iwi.¹⁰ The Crown would transfer title of the forest to the Tūhoe, but after three months it would automatically be “gifted back” to the Crown to manage for the public's interest. The Tūhoe rejected this as inadequate to achieve their goal of reconnecting the Tūhoe people to their land. In 2010, the Crown negotiating team proposed another experiment that had succeeded in a previous settlement: vesting title in a Tūhoe ancestor. The Tūhoe initially agreed and settlement appeared in reach, but at the last minute Prime Minister John Key pulled out of the agreement. There was a popular backlash against transferring ownership of a beloved national park to the Tūhoe, and Prime Minister Key famously stated that doing so was “a bridge too far.”¹¹

In 2011, a breakthrough came when Crown negotiators realized that the Tūhoe's demand for the return of Te Urewera did not necessarily mean the Tūhoe wanted to own it legally (i.e., have title). In the Tūhoe worldview, one cannot truly own nature, and they never specifically asked for ownership. Rather, they asked for the return of the land, which Tūhoe do not equate with ownership. As Kirsti Luke, one of the lead Tūhoe negotiators and current CEO of Te Uru Taumatua (the organization representing the Tūhoe iwi), explains:

Ownership represented a very big challenge and hurdle, and stood in the way of a Tūhoe way of life. Ownership and the owning of Te Urewera has been a mechanism to destroy belonging and care, and therefore community. Ownership grants entitlement without having earned it. It grants rights without having earned

them. Ownership does not value kinship with the things around us. It means that we do not care enough. It does not let us see wide enough the impacts that we therefore have on the land. Rather, it feeds and nurtures self-interest... The impact of this is that it breeds very transactional relationships between humans and the land, and the very thing that breeds transactional relationships between humans and each other. Transactional relationships do not grow community.¹²

The Chief Crown Negotiator John Wood realized a political solution would require neither the Crown nor the Tūhoe to own the land. In thinking about this dilemma, Wood was inspired by the writings of constitutional scholars on the concept of legal fiction.¹³ While legal fiction is usually applied to corporations (i.e., treating corporations as if they were persons), Wood and other members of the Crown negotiating team began thinking about how to creatively apply the concept to an ecosystem like a forest. Several environmental lawyers working on the settlements were also familiar with writings by Christopher Stone (1972) and others on recognizing ecosystems as legal persons.¹⁴

It occurred to Crown negotiators that legal personhood might provide a technical way to sidestep the issue of ownership. If Te Urewera was granted legal personality, ownership of the land could be vested in Te Urewera itself. Then the Crown could say it is not transferring ownership to the Māori, and the Māori could say the Crown does not own it. Tūhoe negotiators accepted legal personality for Te Urewera as an imperfect approximation of recognizing the forest as a whole, living, spiritual being, but likely the best possibility within a European legal framework.

According to John Wood, “once we accepted the idea of Te Urewera owning itself, [the next issue in the negotiations] was how do we exercise responsibility toward it. How is it going

to be governed? Who is going to speak for it? Its rights and responsibilities as a legal person – these are things to be negotiated.”¹⁵ These negotiations opened a window of opportunity for codifying Māori conceptions of nature, and humans’ responsibility to it, into New Zealand law.

Tūhoe, like all Māori iwi, trace their ancestral lineage to a common ecosystem—in their case the forest Te Urewera, which they view as a living, spiritual being. The Tūhoe do not emphasize the rights of nature concept, since “rights” is a foreign concept stemming from the European legal system. Rather, they emphasize their responsibility of guardianship (*kaitiakitanga*) for Te Urewera, to which their iwi is tied.¹⁶ They consider it an ancestor, and their focus is their responsibility to care for their ancestor in order to maintain their ties to it.

For this reason, both Tūhoe and Crown negotiators assert that the most important part of the Te Urewera Act is not the legal personality provision, but the related guardianship arrangement. The Act creates statutory guardians—the Te Urewera Board—whose purpose is “to act on behalf of, and in the name of, Te Urewera” (s 17). For the first three years (2014-2017), the board was comprised of eight members, four appointed by the Tūhoe and four appointed by the Crown government. Subsequently, the composition shifted to nine members, six Tūhoe-appointed and three Crown-appointed. Once appointed, the board members are required to represent the interests of Te Urewera, not the Tūhoe or Crown.

The Act also removes Te Urewera from the national parks system, and consequently transfers governance authority from the Department of Conservation to the Te Urewera Board. With full autonomy to govern Te Urewera, the Te Urewera Board is required to create a Te Urewera management plan that reflects Tūhoe customary values and law.

For the Tūhoe, the legal personality and guardianship provisions constituted an acceptable approximation for their demands that Te Urewera be returned and for self-

determination (*mana motuhake*). New Zealand's government also agreed to provide an historical account of wrongs committed against the Tūhoe, a formal apology, as well as financial and cultural redress worth NZ\$170 million. These conditions formed the basis of a treaty settlement that was signed on June 4, 2013, after being ratified by all Tūhoe members. Aspects of the settlement relating to the status and governance of Te Urewera were enacted through the 2014 Te Urewera Act. All other aspects of the settlement, regarding financial and cultural redress, were given effect by the Tūhoe Claims Settlement Act 2014.¹⁷

The Meaning of Legal Personality for Te Urewera

Among rights of nature activists and legal scholars, the Te Urewera Act gained international recognition for recognizing an ecosystem as a legal subject with rights. For the Tūhoe, however, the legal personality provision was important not because it granted rights to the forest, but because it removed the pre-existing legal framework, providing space for the Tūhoe to create a new governance system rooted in Tūhoe culture and the principles of Earth Jurisprudence.

Tamati Kruger, the lead Tūhoe negotiator, explains that by removing the notion of Te Urewera as property, the legal personhood provision opened a space for the Crown to better understand Tūhoe aspirations in a way that was less threatening:

Property rights in western society is sovereignty. That is its manifestation. So, when you neutralize that, the crown then realizes you're not competing over sovereignty. The crown is then open to suggestions because you're not here to overthrow the government and take sovereignty. So, you are removing something

that's been there in the mindset for centuries, over various civilizations. You are removing that. And once its off, then there's freshness of ideas.¹⁸

Kirsti Luke explains the purpose and impact of the legal personality provision this way:

Our reason for enabling a legal personality to apply to land was to withdraw the law—to filter out the motives, the agendas, the objectives that have been created by somebody else's law... This legal personality is a piece of law to remove human transactions, human thinking, human self-interest from land in order that our Indigenous beliefs, the care, the kinship, the connectedness, the want to share things with each other, to hold things in common, to be concerned to build a future made up of strong, giving people. Strong humans are the things that manage excessive lifestyles. Technology does not...And we have seen no other way than to step into somebody else's courtroom, and ask that court to remove their rules in order that mine can apply. So Te Urewera is not property. An ownership situation can only ever see Mother Earth as property, and property is something that is human made. Te Urewera is not property. Te Urewera is not real estate. Te Urewera is my mother. She gives me life and continues to. She is the thing that gives me enjoyment. She reminds me that I am connected to these plants and other creatures, and that I love them, and that they love me. These are things that humans are forgetting how to do.¹⁹

Managing People for the Benefit of the Land

On September 2017, the Te Urewera Board presented its management plan for Te Urewera, called *Te Kawa o Te Urewera* (hereafter, Te Kawa). The plan provides the foundation for a governance system based on Tūhoe values and culture, which share the principles of Earth Jurisprudence described above. As Te Urewera Board Chairman Tamati Kruger explains:

Te Kawa does not work the same way as other management plans, which focus on setting rules and stock-taking. That traditional approach can frame nature as a set of discrete resources to be managed and used. Te Kawa is different. It asks us to stop and reflect on Te Urewera and what that means as a living system we depend on for survival, culture, recreation, and inspiration. Te Urewera has its own identity that is legal, but also physical, environmental, cultural and spiritual.²⁰

This quote captures a central tenet of Earth Jurisprudence—that human laws and governance systems should conform to the natural laws (e.g., the laws of physics, chemistry, biology, etc.) governing how ecosystems function. In Western science, this natural order is studied by ecological scientists, who examine how interactions among organisms and their biophysical environment regulate and sustain living ecosystems. For many Indigenous cultures and Earth Jurisprudence scholars like Thomas Berry (1999), the natural order of the Universe contains metaphysical elements as well. Regardless, a common thread in both Earth Jurisprudence and Tūhoe cosmovision is that knowledge of the natural order comes from an intimate relationship with “the land” (i.e., the natural world).

Kirsti Luke expresses this idea well in her interview with Hal Crimmel (published in this issue of ISLE). After asserting that people’s relationship to “the land” mirrors that of a child

relating to their parent, the “earth mother,” Luke says that culture is a “kinship connection” that comes from being born to the same land. It is in this sense that the Tūhoe see themselves as having kinship ties to all the members of Te Urewera’s ecosystem. She then states:

A culture has its idea about the order of the universe—where we all come from and therefore an idea about the purpose of life and living it. When you are born to wherever it is that you were born on the planet that there then becomes the thing that you are connected to. That there is the thing that tells you the order of the universe.

Earth Jurisprudence and Tūhoe cosmovision are also similar in asserting that an ecosystem’s natural order is so complex that humans are incapable of fully understanding it. Te Kawa acknowledges that “Te Urewera’s living system has a balance and a rhythm that is mysterious and imperceptible to human senses. She is timeless and pulses to a beat of her own. Understanding, then, what is a priority or urgency by Te Urewera opinion is somewhat illusory” (37).

Consequently, Earth Jurisprudence says humans should structure their governance systems to fit into this order as best they can, rather than trying to bend nature to human will. The latter is folly, since humans are embedded in intricate, interdependent relationships with all other members of the ecosystem. Trying to control nature (e.g., by treating its elements merely as objects to be exploited or pests to be eliminated) risks upsetting the balance that sustains ecosystems’ functioning, producing disastrous consequences for all its members. When talking about maintaining balance in the Te Urewera ecosystem, Kirsti Luke states:

That is also what I mean by being connected. Just because you don't understand the purpose of that bug or that insect does not mean they don't have a purpose that isn't working for your interest. Our miniscule brain *cannot* perceive what is the might and sophistication of nature. We are never going to understand it all. Yet without me needing to understand everything, the world exists (see article by Crimmel in this issue of ISLE).

While humans may not be able to understand the full complexity of nature, they can, through experience and a focus on nature, understand that reciprocal relationships tie them to the land and confer responsibilities for its care. Because humans are part of surrounding ecosystems, they will of course impact them. People too must live off the land; it is their home. Tūhoe reject the Western conservationist view of nature as a museum that is to be seen but not touched. However, reciprocal relationships and respect for nature create a responsibility for humans to limit their activities such that they will not overwhelm other members of the ecosystem, and potentially the system itself. For this reason, Te Kawa calls for Tūhoe to prioritize “the common worry for excessive use by human activity and perhaps also our inactivity to better our habits for living with Te Urewera” (37).

This idea that humans cannot control nature, but have an interest in managing their own behaviors in a way that maintains balance in the ecosystems on which they depend for life, is captured in a Tūhoe phrase so oft-repeated that it is practically a slogan: “Te Kawa is about the management of people for the benefit of the land – it is not about land management.”²¹

This principle of managing people for the benefit of the land, rather than managing land for the benefit of people, is the main difference between Te Kawa and the New Zealand government's previous approach in Te Urewera. According to Kirsti Luke:

One of the practical things that we have done is we have giggled and laughed and poked fun at the New Zealand government's approach to conservation management. The government has for a very long time promoted the idea that humans can manage the land, that somehow human superiority knows something that land and nature does not. We've outlawed that in Te Urewera.²²

Te Kawa explains the Tūhoe approach this way:

We know that Te Urewera predates us and that we are her creation living with and amongst all of her kin. As her children, we are born with responsibility; we are not born with power and rights. The most difficult of virtues, yet most important to accomplish, is our sense of belonging, to know our place and contribution to creation. In reaffirming this natural order, the [Te Urewera] Board through Te Kawa is disrupting the notion of our false superiority over the natural world. In all decisiveness, we are returning to our place in nature, as her child (15).

Guardianship in Te Urewera

Once ecosystems are recognized as legal persons with rights, the practical question arises: who can speak for nature in human legal and policy forums? This issue is known as “guardianship” in the rights of nature literature.

In Western law, guardianship implies that decision-making authority is taken away from a person who is incapable of managing their own affairs and given to someone else. For example, courts commonly use the legal doctrine *in loco parentis* (Latin for “in the place of a parent”) to appoint guardians for children or incapacitated people who cannot defend themselves. There are cases where this legal doctrine of guardianship has been applied to nature. In India, the Uttarakhand High Court recognized the Ganga River as a legal person and invoked *in loco parentis* to make a set of government officials responsible for acting on behalf of the river for its protection.²³

Many rights of nature advocates find this literal application of legal guardianship to nature problematic, since it violates the fundamental Earth Jurisprudence principles that nature knows better than humans how its ecosystems should function and evolve, and that nature is better understood as the parent in the human-nature relationship. Certainly, the Tūhoe conceptualize guardianship differently. While the Te Urewera Act does establish statutory guardians (the Te Urewera Board) who speak for nature in human institutions, the Tūhoe’s approach to guardianship focuses more on creating a system designed to listen to what Te Urewera is saying, and using this information to manage human impacts. Guardianship is not about managing nature like one would manage a child, but rather guarding the relationship between Tūhoe and the land.²⁴

The process of implementing Te Kawa requires recovering ancestral knowledge, customs and practices in order to reconnect the Tūhoe people to the land and fulfill their responsibility as

kaitiaki (guardian or steward) of Te Urewera. One of the ways they are doing this is establishing “bush crews” led by respected Tūhoe elders who have always lived in the forest and have kept the traditional way of life. The first bush crew was created in late-2018 in Ruatoki, the main Tūhoe population center. It is led by Maynard Apiata, a universally respected elder who still lives the traditional way and is thought to know the forest better than anyone.

“Uncle Maynard,” as he is affectionately known, is training a group of about 10 young Tūhoe men to live traditionally in the forest, and to learn to know Te Urewera’s features and rhythm intimately. Over time, the plan is for this bush crew to train bush crews in each of Te Urewera’s valleys, so that there will be Tūhoe crews living and working throughout the forest.

For Tūhoe leaders, including those on the Te Urewera Board, these bush crews are the real guardians of Te Urewera. By living in the forest and carefully observing what happens over time, these bush crews are (re)learning to listen to the voice of Te Urewera. They then communicate what they hear to Te Uru Taumatua, the Tūhoe organization responsible for carrying out operations that “manage people for the benefit of the land.” As Tamati Kruger explained:

[In 2018] we realized that we were starting in the wrong place. That guardianship is not in the board room, in those that were mandated. I think we were projecting from modern society, from Pākehā Western culture that [the Te Urewera Board] are the guardians. Slowly we figured out that no they are not. The guardians are [the bush crews]. These are the people who probably are not educated in the Western definition. They don’t have diplomas and degrees. They probably suffered through the education system. They probably have some literacy issues.

They don't like meetings. They don't like agendas. They don't like papers. But they love the land and they love living there, working there, sensing it and being part of it. Now that's a guardian.²⁵

In practice, the guardianship arrangement in Te Urewera involves a networked system of governance involving three types of actors. The Te Urewera Board speaks for Te Urewera from a legal and philosophical basis, establishing general principles for people management in Te Urewera. The bush crews speak more directly for Te Urewera, in the sense of living in the forest, observing its natural order and evolution, paying attention to signs the forest is giving them, and communicating this to Te Uru Taumatua operations teams working in each of Te Urewera's four valleys. Te Uru Taumatua then compiles this information into a composite picture of the forest as a whole and uses this information to make operational decisions for the forest as a whole.

Earth Jurisprudence in Practice

While the Te Urewera Act continues to ensure that Te Urewera lands are available for public use and enjoyment, Te Kawa's principle of managing people for the benefit of the land reverses the National Parks Act's focus on managing land "for the benefit, use, and enjoyment of the public" (s 4). Consequently, the criteria used to make decisions in Te Urewera differs in subtle but important ways from the approach taken by New Zealand's Department of Conservation (DOC) when Te Urewera was a national park. Before an action is taken, the Tūhoe ask whether the purpose is to benefit Te Urewera or people. Actions to benefit Te Urewera are

generally taken. Actions to benefit people will only be taken if the impact on Te Urewera is limited and does not upset balance in the ecosystem.²⁶

Dealing with the forest's possum population provides one example of how governance has changed under Te Kawa. DOC considered possums to be the main “pest” in Te Urewera. Possums were introduced to New Zealand in 1858 to establish a fur trapping trade. Because possums have no natural predators in Te Urewera (besides humans), their population skyrocketed, threatening native bird and plant species. DOC approached this as a “pest control” problem and employed aerial spraying of 1080 (a poison). Although extremely harmful to the environment (including human health), DOC sprayed 1080 because it was the cheapest approach.

The Tūhoe view towards possums is more complicated. On one hand, humility towards nature makes many Tūhoe uncomfortable with treating animals as “pests.” As Kirsti Luke notes:

Because I'm a human I take responsibility for causing all of this development and pushing all of these animals into a corner. Everybody now calls them pests.

Because I took this land around here where ordinarily they could have lived in balance because there was enough land to go around. I took and ate up all of the land to put my houses on and my farms and now I've got the cheek to turn around and call that possum a pest... We do not manage the land. So our business—our number one pest control intent is to make harder, stronger, responsible humans (see article by Crimmel in this issue of ISLE).

On the other hand, there is a recognition that because possums have no other natural predators in Te Urewera, their rapid population growth could threaten the forest ecosystem if left

unchecked. Possums, as well as rats and stoats, eat regenerating growth in the forest and eat the eggs of native bird species at a level that could lead to extinction. By killing birds that normally spread seeds that help the forest regenerate, possums have a system-wide impact.

Consequently, the Tūhoe do work to limit the possum population, but through trapping and hunting. While this is extremely labor-intensive, cost is not an issue because hunting possum provides a sustainable livelihood for many Tūhoe families. Tūhoe consume the meat and sell the fur to make blankets, hats, and other goods. My interviews with possum hunters suggest that possum hunting is not seen as a pest eradication exercise in the same way that DOC conceptualized it. But it also is not an economic exercise that might incentivize Tūhoe to boost possum populations to maximize profits. Rather, Tūhoe hunters expressed a duty to help maintain the possum population at a level that will not overwhelm the ecosystem and cause other important species to go extinct. They emphasized that the Tūhoe are also part of the forest ecosystem and must live off the land, and they are the only natural predator of the possum. My impression is that the Tūhoe play a natural role in the forest's food web so that the forest ecosystem can sustain itself, much like the role wolves play in Yellow Stone park when they hunt deer. Importantly, they do so by minimizing their ecological impact.

Controlling possum populations through hunting shows how the Tūhoe are reviving traditional practices of sustainably living off the land, which allows them to conduct ecologically sustainable practices rejected by DOC as too expensive. As Kirsti Luke noted, “DOC only employed like six people. We can bring 5,000, and they are not motivated by money, but by love of the land.”²⁷

To symbolize the Tūhoe's relationship with the land and their commitment to Te Kawa principles, the Tūhoe built New Zealand's first Living Building as their tribal headquarters.²⁸ To

meet international Living Building standards, the Tūhoe had to meet 10 stringent imperatives for ecological sustainability, including using natural materials found locally, using net zero energy, and net zero water use.²⁹ The building is meant to mirror Tūhoe values and “bring to life the idea that we must restore the spaces that we live in. We must live within our means.”³⁰ The Tūhoe have applied the same techniques used in this building to minimize the impact of other structures throughout Te Urewera.

Their strategy for maintaining roads similarly illustrates minimizing human impact for the benefit of the land. Instead of paving roads with asphalt, which releases toxins into the air and soil, the Tūhoe developed a technology to cover dirt roads with a mixture of tree sap and a fiber byproduct of paper manufacturing. When sprayed on roads, it packs and seals the dirt, producing a durable, paved-like surface. The technology was successfully piloted in 2017, and plans are underway to expand the so-called “Nature’s Road.”

Parts of Te Urewera, particularly Lake Waikaremoana and its “Great Walk,” continue to be popular tourist destinations. Under Te Kawa, people continue to go hiking, fishing, camping, photographing, hunting, and foraging for natural medicines. However, Te Kawa principles do require some changes compared to DOC management. For example, visitors are no longer permitted to use “tired boats” that leak oil and gas into the lake. Restrictions are placed on where people can free camp and light fires, and campers are required to carry out their trash with them. Visitors are not allowed to chop down native trees without permission. In short, visitors are welcomed to continue traditional recreation activities, but must do so in a way that respects the land.

Conclusion

While “rights of nature” is a foreign concept to many Indigenous groups, the Te Urewera case illustrates how rights of nature laws can be compatible with Indigenous rights, like self-determination and preservation of culture, particularly when Indigenous customs and values are consistent with the principles of Earth Jurisprudence. In such cases, rights of nature legal provisions can provide a mechanism for removing pre-existing legal frameworks that treat nature as an object to be exploited for human benefit. The Te Urewera Act also empowered the Tūhoe to retake their traditional place as *kaitiaki*, or guardians of Te Urewera. This created space for the Tūhoe to begin the long process of recovering ancestral knowledge, customs, and practices to reconnect the people to the land. In doing so, they provide one example of how Earth Jurisprudence can be practiced to promote human wellbeing through a more ecologically sustainable approach.

Notes

¹ See Thomas Berry; Cormac Cullinan.

² See David Boyd.

³ See Cormac Cullinan.

⁴ Waitangi Tribunal, Part 1, s 3.3.

⁵ See Judith Binney.

⁶ Vincent O’Malley.

⁷ Tūhoe Claims Settlement Act 2014, s8(9).

⁸ Tamati Kruger, lead Tūhoe negotiator, interview by author, Wellington, New Zealand, August 17, 2016.

⁹ Ibid.

¹⁰ For example, Ngai Tahu gave Aoraki/Mt Cook back to the country after its settlement.

¹¹ “Tūhoe win control over national park.”

¹² Kirsti Luke. Presentation at the United Nations Interactive Dialogue of the General Assembly on Harmony with nature, United Nations Headquarters, New York, Monday 23 April 2018.

¹³ John Wood, Chief Crown Negotiator, interview by author, Wellington, New Zealand, August 10, 2016.

¹⁴ Christopher Finlayson, minister for Treaty of Waitangi negotiations, interview with the author, Wellington, New Zealand, August 11, 2016; Paul Beverley, Crown lawyer for the Te Awa Tupua and Te Urewera settlements, interview with the author, Wellington, New Zealand, August 19, 2016; Rachel Houlbrook, member of Crown negotiating team, interview with the author, Wellington, New Zealand, August 10, 2016.

¹⁵ John Wood, *op. cit.*

¹⁶ Tamati Kruger and Kirsti Luke, lead Tūhoe negotiators, interview by author, Wellington, New Zealand, August 17, 2016.

¹⁷ While extremely important for the Tūhoe people, details of the Tūhoe Claims Settlement Act are beyond the scope of this article.

¹⁸ Tamati Kruger, interview by author, 2016.

¹⁹ Kirsti Luke, Presentation at the United Nations, *op. cit.*

²⁰ Tamati Kruger, cited in Meghan Walker.

²¹ Te Urewera Board (1).

²² Kirsti Luke, Presentation at the United Nations, *op. cit.*

²³ Craig Kauffman and Pamela Martin, “How Courts Are Developing River Rights Jurisprudence.”

²⁴ Kirsti Luke, CEO of Te Uru Taumatua, interview by author, Whakatane, New Zealand, June 1, 2019.

²⁵ Tamati Kruger, Chair, Te Urewera Board, interview by author, Taneatua, New Zealand, May 27, 2019.

²⁶ Leader of Te Uru Taumatua operations team in Waikaremoana, interview by author, Waikaremoana, New Zealand, May 30, 2019.

²⁷ Interview by author, Wellington, New Zealand, August 17, 2016.

²⁸ The building’s story is featured in the award-winning documentary, *Ever the Land*, 2015.

²⁹ For Living Building standards, see <https://living-future.org/lbc/case-studies/te-kura-whare/> (Accessed September 5, 2019).

³⁰ <https://www.ngaiTūhoe.iwi.nz/te-kura-whare> (Accessed September 5, 2019).

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