



## A Seat At The Table

### *Te Awa Tupua, Te Urewera, Taranaki Maunga and Political Representation*

CHRISTINE J. WINTER

*University of Sydney, Australia*

#### *Abstract*

Aotearoa New Zealand acknowledges mātauranga Māori in the two Acts and one Memorandum of Understanding recognising the ‘personhood’ status of three geographical regions—Te Awa Tupua, Te Urewera and Taranaki Maunga. They blend the legal fiction of corporate personhood with the already always understanding of human-nonhuman kinship and entanglement of Māori philosophy, Māori knowledge and wisdom, and Māori epistemology. Through kaitiaki (trustees) these three entities have volition in their ongoing maintenance, development negotiations, and ‘land-use’, and ‘the rights, powers, duties and liabilities of a legal person’. These attributes suggest something more than mere volition in self-management and protection: they suggest agency. This article explores the implications of nonhuman agency as *potential for political voice*. As representatives of entanglement for all being—animal (including human), vegetable and elemental—and as a matter of justice they are, perhaps, obliged to participate in democracy and the nation is, perhaps, obliged to give them a ‘seat at the table’. As political agents with equal status to human and corporate persons Te Awa Tupua, Te Urewera and Taranaki Maunga might unsettle settler politics and challenge the imbalances of the Anthropocene.

Keywords: corporate personhood, nonhuman personhood, democracy, Māori, decolonisation

The longstanding, inseparable, ontological entanglement of some iwi (tribes) and their traditional rohe (territories) have been recognised formally by the government of Aotearoa New Zealand. This recognition is part of ongoing reparations by the government to redress the injustices of nearly 180 years of misinterpretation of, and transgressions against, the Treaty of Waitangi. The Acts and understandings entered into by the Government and iwi representatives recognise the kinship relationships that bind iwi with maunga (mountains), awa (river systems) and whenua (the land). They blend the legal fiction of corporate personhood with the already always understanding of human-nonhuman kinship and entanglement of rapunga whakaaro, Māori philosophy, mātauranga Māori, Māori knowledge and wisdom, and the relational Maori epistemological framework, whakapapa. The agreements between Crown and iwi use the well-recognised and accepted 'legal fiction' of personhood. Originally contrived to enable companies to do something only natural persons could do previously, to raise and/or borrow money, this fiction is now sown in new counter-capitalist ground. Through kaitiaki (custodians, guardians, or trustees)—appointed to act as their voice—these three entities' identities are recognised by the Crown: they have volition in their own ongoing maintenance, development negotiations, and 'land-use'. Furthermore, they have 'the rights, powers, duties and liabilities of a legal person'. These latter attributes seem to grant something more than mere volition in self-management and protection: they suggest agency. Significantly, they might also *imply* political agency.

This article explores the implications of Te Awa Tupua, Te Urewera and Taranaki Maunga's status as legal persons and the possibility that might also award them political agency. It is an act of decolonisation. It builds on the

existing blend of rapunga whakaaro, mātauranga Māori, and whakapapa with corporate law and welds it to the democratic ideal of political representation. It is also a subversive act: an act that aims to draw an arc between the power, influence and political agency of corporations derived from the very same 'personhood' construct and to demonstrate a possibility that these 'new' legal persons are similarly entitled to power, influence, and political agency. I do not aim to develop the 'how' nor lay out a list of potential mechanisms. Rather the purpose of the article is to explore the *political* agency of corporate persons and thence to open the korero, to begin a discussion or debate, to explore the *potential* this construct of legal personhood offers for nonhuman democratic political agency. I am responding to Blanco and Gear's suggestion that 'all forms of legal personhood—including new and inventive forms—need to be critically evaluated for the degree to which they are drawn into the centripetal ideological construct' (2019, p15). I am suggesting that rather than a colonising and limiting move, it may reverse the centripetal spiral, and in becoming centrifugal create opportunities for radically reimagining politics and democracy in Aotearoa (and elsewhere). It may indeed hold the centripetal and centrifugal in dynamic tension such that the question is not whether nonhuman personhood imposes colonial structures or subverts them but rather that by doing both (spiralling in and out as it were)<sup>1</sup> it unleashes a different set of possibilities. My argument builds from two moves—one in Australia, the other in the United States of American (USA)—that give corporate 'persons' democratic and liberty rights or privileges (Wenar, 2015). In Australia those rights take the form of directly voting in municipal elections, and in the USA corporates have rights to (political) free speech.

The political rights of corporate persons in Australia and the USA, discussed in the first part of this article below ("Corporate personhood"), provide a precedent for direct political influence by legal identities or persons. The second part ("Nonhuman personhood") turns to the legal personhood status of the three geo-regions in Aotearoa. Forged within Treaty of Waitangi negotiations, they blend (startlingly) Maori philosophy, knowledge, conventions, and spirituality with western positivist legal personhood conventions. That is, two incommensurate understandings of the world are blended, and despite suggestions this may close off possibility (Blanco & Gear 2019), and shut out

the light as it were, I am suggesting an alternative view. Drawing together the political rights of corporations in Australia and the USA with the legal rights of Te Awa Tupua, Te Urewera and Taranaki Maunga in Aotearoa the final section focuses on how this legal structure suggests it is neither farfetched nor fanciful that 'nature' could (or perhaps, should) be afforded an independent political voice. As representatives of all being—animal (including human), vegetable and elemental—and as a matter of justice they may be obliged to participate in democratic action and the nation is, perhaps, obliged to give them a seat at the table. As political agents with equal status to human and corporates Te Awa Tupua, Te Urewera and Taranaki Maunga could unsettle settler New Zealand's politics and the imbalances wrought by the asymmetric power of humans and corporates in western democracies. Furthermore, I suggest these nonhuman identities may also be obliged to act on behalf of all nonhumans in international political fora—the Conferences of the Parties to the United Nations Framework Convention on Climate Change for instance.

### *Corporate personhood*

I am attempting to work with and harness, while simultaneously subverting, three different legal moves: Aotearoa's recognition of geo-regional personhood; the obligation of corporates to cast votes in local body elections in all but one state in Australia; and the Supreme Court of the USA's ruling on *Citizens United*. It is, in part, a response to Blanco and Greer's call that 'it is increasingly necessary to imagine potential new recipients of legal personhood and/or rights of standing' (Blanco & Greer 2019, p3).

What is legal personhood and what does it achieve? Forged in the furnaces of colonial expansion the idea of legal personhood was and is to create from a multitude a singular identity with which others can contract and which can assume property rights previously afforded human persons only. It is an 'artificial person' (Winkler, 2018, p47). Legal personhood allows a group of human persons to act as one. It also allows a nonhuman entity, an abstract 'thing', a business, to raise money, to contract with other businesses or individual humans, to open bank accounts, etc. Those rights bear responsibilities. The corporate has responsibilities to 'its' multitude.<sup>2</sup> That is a benign parsing. Blanco and Greer suggest that legal personhood has a more

malign personality:

The construct of the legal person is [...] legible as a property-centred assemblage that conditions multiple sites of capitalistic biopolitical governance. Legal personhood is a pivotal and mutable ideological tool for mediating exclusionary power relations. It is also key to privilege of corporations and equally pivotal to the production of marginalised subjects intransigently marked as law's 'outsiders'. (2019, p13)

It is on behalf of the 'intransigently marked ... outsiders' that this article takes up the fight. But I get ahead of myself. Let's think some more of the benign characteristics of the corporate person.

A corporate identity must act in the best interests of its shareholders. These best interests take the form of profits or in the case of some corporates the successful delivery of specific services without the objective of profit-taking (for instance schools) (Friedman, 1970). Anything beyond a money making or service motive (such as a social or environmental objective) Friedman famously argued lies with the individual living employee of the corporate: the corporate person has no 'social responsibility' (ibid). So the idea of legal personhood in the corporate realm restricts that corporate to a narrow range of interests that are isolated from the wider environment—human and nonhuman—in which it is located. Or if it does, only if that will maximise profits. It is entirely self-interested. That self-interest can include an influence on the democratic process of nations. The means by which a corporate identity implements its democratic rights is manifest in different ways in Australia and the USA.

What then does it mean to be 'a person' or to have legal personhood and what rights and obligations does that status bear in democracies? If democracy means one-'person'-one-vote, then it seems, perhaps corporations and non-human persons may also have the right to demand such rights. These sorts of rights have been demanded and granted in Australia and the USA albeit in different ways in each country. It is to corporate participation in elections I now turn before considering the implications for Te Awa Tupua, Te Urewera and Taranaki Maunga.

*Australia—corporates vote*

There are six states in the Commonwealth of Australia. In five—Tasmania, South Australia, Western Australia, Victoria and New South Wales—corporations are enfranchised to vote in local body elections (Goss, 2017). That is, corporations have a right normally attached to natural persons, the right to participate directly in the democracy. In those five states local body democracy is of the (human) people and corporate persons, by the (human) people and corporate persons, for the (human) people and corporate persons.<sup>3</sup> Furthermore, corporate persons in the City of Melbourne and City of Sydney, the CBD local body area of the capitals of Victoria and New South Wales respectively, get two votes each.

This is a property based right. If a corporation owns or leases/rents real estate in Tasmania, South Australia, Western Australia, Victoria or New South Wales then it may nominate one natural person to vote on its behalf in local body elections (*ibid*). That is the equivalent of one corporation one vote. However, there are provisos in most of these jurisdictions that limit each human person to one vote in the electorate. In effect, then, the corporate representative must be someone who is not resident within the local body area in which the vote is taking place (*ibid*). In the CBD local body area of Melbourne and Sydney corporations nominate two persons to vote on the company's behalf. The practicalities mean that owning or leasing real estate gives corporations the right to vote in local body elections and corporate persons exercise that vote through human persons. Furthermore, in the CBD local body area of Melbourne and Sydney corporate voting is compulsory.<sup>4</sup> In Victoria, Tasmania and South Australian there is no citizenship threshold—to vote the corporate need only be a landowner or leaser/renter within the municipality (*ibid*). The effect is corporates have democratic agency through their appointed human agent(s).

These corporate voting rights are restricted to local body elections. No such rights exist in elections at either the state or federal level in Australia. Indeed, the very idea is seen as an anti-democratic privilege of the wealthy and business elite (*ibid*). The Australian Commonwealth Constitution, which governs federal politics, expressly restricts voting to natural persons, and corporates have been

denied the vote at state level since the early 1970's expressly because of the anti-democratic implications (ibid).

The argument for granting this local body democratic agency to corporations derives from the idea the corporate person has interests of equal validity to those of resident natural persons. That is, they are equally interested in supporting the strength, health and prosperity of municipalities and districts (ibid). However, there are clear reasons to challenge corporate voting rights: it embeds privilege and corporate self-interest at the expense of the common rights of residents; residency rather than property ownership may be seen as more democratic—giving all those with an interest in the running of and service provisions within an electorate a fair and equal voice; in the case of foreign-headquartered corporates it grants non-citizen interests a vote weakening the standing of citizenship rights; and the principle of one-person one-vote is contravened. Nevertheless, this precedent exists, and it frames one potentiality for similar rights for nonhuman legal persons.<sup>5</sup>

*USA – corporate persons have liberty rights*

Across the Pacific American corporates have established a First Amendment right, a liberty right, to a voice in elections. For 200-years corporates in the USA sought to 'enjoy the same rights as individuals to try to influence elections' (Winkler, 2018, p192). For a long while these demands were resisted—mainly by progressive judges in the Supreme Court. But the deliberations and outcome of the Citizens United case in a mainly conservative Supreme Court of the USA changed that (Winkler, 2018). The outcome of that case is corporates can (legally) play a direct role in the democratic process.<sup>6</sup>

In addition to rights of property and contract, rights of due process, equal access to courts and the protections of the criminal provisions in the Constitution, American corporations progressively gained liberty rights—freedom of the press, freedom of association, etc. Finally, in 2010 the Supreme Court ruled corporations have First Amendment rights—that is freedom of speech rights. Building from an earlier Supreme Court decision on the rights of listeners (which afford listeners the right to 'hear' what corporates have to say) the 2010 decision gave corporates the freedom to 'speak' in elections (ibid). This right to speak in elections is then translated as the freedom for corporations to pour

money into influencing the outcome of American elections. This speech right is a right to promote the messages the corporates want delivered within the electorate and the legislature, by channelling advertising and donations towards business-friendly political candidates. It is a right to endorse electoral candidates who will promote corporate self-interest. In Friedman's terms this is exactly the sort of responsibility corporate executives should be exercising.

Historically though, liberty rights, and more significantly here, rights to freedom of political expression, are human rights derived from the principles of human equality and human dignity. Not only that, but according to Locke, they exist because humans are naturally free (Locke, 1997). That is, humans have a right to determine the political conditions under which they live, and to participate in determining any limits to their freedom that are imposed in the name of the state. Rights exist to protect human beings from institutional intrusions on individual freedoms (Wenar, 2015). This seems like the antithesis of corporate intervention in the democratic process.

Some theorists prefer to refer to these human rights as privileges rather than liberties (*ibid*). They are privileges humans have because we are individuated, free, equal and have dignity. 'They are,' suggests Duncan Ivison, 'a way of expressing what it would mean to treat someone as a person, and as a citizen of a particular kind of state or political community' (2008, p94, *italics original*). That is, voting rights recognise human independence and agency and grant the citizen volition in how they are governed and the conditions of the collective enterprise of the state. However, a corporate is an 'unnatural' person—a single representative for a multitude. In the contexts of both Australia's and the USA's political arenas a corporate has the privileges of a human individual to be treated as a citizen of the political community. A corporate voice in electoral processes grants the corporate freedoms and equality like those of individual human citizens. They are recognised as having interests differentiated from those of individual voters—sufficiently different to warrant a separate political voice to those of the individual humans who constitute the corporate; the shareholders, board members, executive, and employees.<sup>7</sup>



I am suggesting these examples of electoral rights provide a precedent for extending the privileges of citizenship and more particularly the privileges of democratic political participation to all or any 'body' included within the legal fiction of 'legal persons'. This potential already exists, in the form of direct votes and free speech rights, within the parameters of western ontological, legal and political boundaries. The question I now turn to is whether nonhuman personhood in Aotearoa, which blends rapunga whakaaro and mātauranga Māori and western philosophic and legal ontologies, might also suggest that democratic political participation is a privilege, or right, which should be extended to Te Awa Tupua, Te Urewera and Taranaki Maunga.

### *Nonhuman personhood*

By '[w]eaving distinct, even incommensurable vocabularies together, in legal frameworks ... [there will be] unpredictable outcomes, but they may prove enlivening'. (Salmond, 2014: 305)

The National Parks Act is a mono-cultural statute premising western values for preserving land. Te Urewera Act demonstrates a new bi-cultural way of articulating the importance of national park lands for multiple reasons ranging from science to cultural. (Ruru, 2014: np)

In Aotearoa, the idea of legal personhood has been harnessed as part of the government's reparations for past breaches of the Treaty of Waitangi—an agreement signed by 500+ Maori leaders and the British Crown in May 1840. It does so by entangling the legal framework of corporate personhood with rapunga whakaaro and mātauranga Māori.

Very briefly by way of background. Aotearoa is a settler state. The British colonists came not simply to strip the islands and seas of natural resources, but to settle migrants from England, Scotland and Ireland, all under the rule of the British Monarch. But the land was already settled. Māori lived in communities, in villages. They had well established horticultural activity, expansive fisheries, linked by nationwide trade routes. They had comprehensive political and social structures, philosophies, spirituality, education, arts, science and medicinal practices. There could be no pretending these were nomadic peoples or that the land was terra nullius. Consequently, the British formalized their dominion

through 'a' treaty with Māori—the Treaty of Waitangi is the English language version and Te Tiriti o Waitangi the Māori version. I differentiate the versions because they are not exact translations. What Māori agreed to in Te Tiriti is not what the English version says they agreed (A. Henare 2007). I am not going to examine that duplicity (ibid) here, but rather suggest that it heralds two relevancies. The first is that the treaties were repeatedly breached by the settler government from shortly after signing (ibid). Second, since the 1980's the government of Aotearoa has been engaged in programs of negotiation and reparations for the breaches (NZ Government 2020). Despite the colonial desire for the 'indigenous people to vanish' (Veracini, 2015: 88), Māori are reclaiming rights as agreed in Te Tiriti. That does not mean Māori philosophy, practices, protocols and institutions of environmental and intergenerational justice are given legitimate place or significant standing within the liberal democratic institutions of the state. However, in granting legal personhood status to territorial regions as part of the Treaty Settlement process, there is a blending of Māori convention with Anglo-New Zealand legal convention.

Rapunga whakaaro are the philosophies of the Māori peoples of Aotearoa. Mārauranga Māori is the knowledge and wisdom of the Māori peoples, founded on deep Pacific Island roots and built from the unique environments of the islands of Aotearoa. With common threads throughout the islands of Aotearoa, each iwi (tribal group) has their own variant. They are living philosophies and knowledge in two senses. First, they entwine all things within whakapapa (literally 'to place in layers', whakapapa is an epistemological framework) as relational and lively beings. The wisdom of the elders tells us to look to and for ways of relating to make sense of the world and to live in harmony with the world. Second, Māori continue to engage with and live within these philosophic frameworks, which like western philosophies continue to 'transform' (Watene, 2016, 288).

One framework relevant here is the principle and embedded practice of kaitiakitanga. Kaitiakitanga is the Māori scaffold for environmental and intergenerational justice. It is frequently described as a system of custodianship or guardianship. However, given the intergenerational thread, where the obligations of kaitiaki to nonhuman are generated from respect for that which the ancestors (spiritual, human and nonhuman) have 'gifted' the present and

obligations to 'pass it forward' to future generations, it might be seen as a philosophy of trusteeship.

The principles of *rapunga whakaaro* and *mātauranga Māori* have been blended with those of corporate personhood to create a hybrid structure. The result is two major geo-regions, the Whanganui River system (Te Awa Tupua) and Te Urewera are now legal identities. In a similar move, the Taranaki iwi and the Government have agreed Taranaki Maunga will also have this status. Taking Māori frameworks, the language of rights and laws of incorporation they structure wide-ranging protections for human and nonhuman elements of these lively relational entities. That status pushes hard against positivist philosophy and the boundaries of post-colonial governance structures. In some ways these Acts may be thought to subvert the structures imposed by colonialism. Or more critically they might be seen to be a capitulation to and acceptance of the dominance of these same structures. I am suggesting the former interpretation gives Māori greater potential for agency and provocation for incrementally more 'radical' rethinking of governance structures in Aotearoa (see also Winter, 2019, 2020a, 2020b). In these legal structures, nonhuman is a subject and bearer of rights. They dissolve the human/nonhuman and sentient/non-sentient dichotomies, challenge fictions of individuality and draw the metaphysical into a legal remit. These dissolutions are clearly laid out in the wording of the background to the Te Urewera Bill:

*Te Urewera*

- (1) Te Urewera is ancient and enduring, a fortress of nature, alive with history; its scenery is abundant with mystery, adventure, and remote beauty.
- (2) Te Urewera is a place of spiritual value, with its own mana and mauri.
- (3) Te Urewera has an identity in and of itself, inspiring people to commit to its care.

Here we see described the great range complex, its forests and lakes, rivers and creatures, soils and rocks, its history and future, and awe-inspiring beauty. But more than that, invoked in (2) are mana and mauri, Māori metaphysical elements that animate all being—human and nonhuman, living and elemental—with respect-worthiness and potentiality (Roberts 2010; Watene 2016; Winter, 2019). Elements which in the western tradition are associated with human

alone and motivate conceptions of human dignity.

The Act goes on to describe the relationship between Te Urewera and Tūhoe—the iwi of this place:

*Te Urewera and Tūhoe*

(4) For Tūhoe, Te Urewera is Te Manawa o te Ika a Māui; it is the heart of the great fish of Maui, its name being derived from Murakareke, the son of the ancestor Tūhoe.

(5) For Tūhoe, Te Urewera is their ewe whenua, their place of origin and return, their homeland.

(6) Te Urewera expresses and gives meaning to Tūhoe culture, language, customs, and identity. There Tūhoe hold mana by ahikāroa; they are tangata whenua and kaitiaki of Te Urewera.

This suggests, Tūhoe are Tūhoe in relation to Te Urewera. Neither has identity without the other. It is the place of belonging, of origin, sustenance, and connection. Meaning stems from Te Urewera, and with that, responsibilities to care for and protect their natural and spiritual qualities.

Some herald the legal creation of ‘personhood’ or ‘identity’ is revolutionary (Salmond, 2014). And to western legal and political minds, to western philosophers it is. It is also, as Ruru identifies above, a ‘bi-cultural way of articulating the importance [of places] for multiple reasons ranging from science to cultural’. For Atihaunui-a-Paparangi (Whanganui Iwi) and Tūhoe of Te Urewera, and Taranaki iwi it is a returning, a reinstatement of what has always, is and always will be (Hutchison, 2014). Human and nonhuman share whakapapa in which human is not elevated above other. Human are the youngest family member, the tiana (Winter 2022), within a complete whole of ‘being on the planet’—not beings but being on the planet earth.

While the stated intention is to ‘preserve natural and cultural values’ (New Zealand Government, 2014: 13), Te Urewera is now declared ‘to be a legal entity with the full capacity of a legal person’ (ibid), and the Te Awa Tupua Bill states that it ‘is “an indivisible and living whole” and comprises the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements and is a legal person with all the *rights, powers, duties*

*and liabilities of a legal person*' (New Zealand Government, 2016. Italics added). By incorporating 'physical and metaphysical elements' the agreements acknowledge a complex of relationships shared with 'the environment'. These Acts are not replicating corporate personhood's 'tendency towards an intrinsically Eurocentric construct prioritising the putatively rational, property owning, white male' (Blanco & Gear 2019: 12). The 'person' is a host of multispecies, multi-temporal, multi-spatial, materio-spiritual relationships. These are not just agreements to hand 'property' management back to iwi. They acknowledge a nested web of relationships thus granting everything within their boundaries the liberties or privileges of legal persons.

Designating personhood is part of the Treaty of Waitangi settlements process, designed to redress past wrongs and restore iwi mana.<sup>8</sup> The Acts recognise in law the existing relationship between iwi and their rohe (territory), the intimate ties between ancestors, place and the living, and the inalienable obligations Māori have to their rohe across wātea (time/space). They renegotiated the Crown's commitment to Te Tiriti and Māori identity, form, representation and relationships. These identities are no longer to be understood as inanimate spaces, as plots on a map owned by individual or collective humans. They are no longer inanimate resources available for allocation, plunder, or domination, nor economic units. The Bill granting personhood to Te Urewera, for instance, 'recognises the mana and intrinsic values of Te Urewera by putting it beyond human ownership' (New Zealand Government, 2014).

This grants the identity—Te Awa Tupua, Te Urewera, Taranaki Maunga—subjectivity. This is unremarkable within an ontology that sites mana and mauri to all things, an ontology that makes no distinction between human and nonhuman (Roberts 2010). Mana, respect-worthiness, is both intrinsic and earned. As a concept it recognises and contributes to the dignity of the bearer. Te Awa Tupua, Te Urewera and Taranaki Maunga are subjects unfettered by a neoliberal capitalist gerontology (Povinelli, 2016).<sup>9</sup> These Acts resist the sorts of distinctions employed within the west to divide human from nonhuman, living from non-living, rational from insensate, and facilitate exploitation that underscore what Povinelli labels geontology, an ontology of domination and exploitation of the nonhuman realm. This resistance then replaces geontology with an eontology—where what matters are the relationships of mutual

entanglement human with nonhuman, nonhuman with nonhuman, and nonhuman with human (Winter 2020a, 2022). Te Awa Tupua's, Te Urewera's and Taranaki Maunga's interests, rights, powers and duties, their mana, have been formally acknowledged by the government. In so doing, their status as decision-makers is enshrined within the law. But they cannot communicate, you might argue. However, it is quite possible for human beings to discern that which is in the best interests of the natural realm: it is just that we choose not to listen (Bawaka Country, 2013). How might their interests be represented? Corporates have human representatives to cast votes, mount advertising campaigns and promote political candidates. So too Te Awa Tupua, Te Urewera and Taranaki have kaitiaki who must speak for the interests of each, as if they are each.

'The bills challenge western framing of time ('ancient and enduring'—there is not end and the beginning is before the realms of history) and the animate inanimate divide ('has an identity in and of itself' and 'with its own mana and mauri')' (Winter 2020a). Those descriptors reflect Māori understandings of what it is to be. Maori ontology is relational, and relationships are sought with all beings. It is also the case neither human nor nonhuman is thought to be complete without the other. It is an ontology that celebrates relationships and relating. One that looks for and identifies with connectivity. The role of humans, as youngest sibling and kaitiaki, is to work to uphold the relationships and the welfare of all. Within the econtology '[a]ncestors and the generations to come [have] as much interest in the land as the individuals living at any point in time' (Stephenson, 2001: 166). The protocols and traditions of kaitiakitanga are 'not passive custodianship, nor ... simply the exercise of traditional property rights, but entails the active exercise of responsibility in a manner beneficial to the resource' (Ruckstuhl, Thompson-Fawcett, & Rae, 2014. *Italics added*). Thinking as and in relation to other is necessary to benefit these identities.

Te Awa Tupua and Te Urewera are now legal persons, and Taranaki Maunga will be also. They are identities, like corporations, with multiple 'shareholders' who are animate and inanimate, animal, vegetable and mineral, human and nonhuman. They have the 'rights, powers, duties and liabilities of a legal person', and under normal circumstances that includes the right for a natural person to vote. As we have seen, in Australia, at least, it grants local body

voting rights and in the USA rights to a 'voice' in elections to legal persons. Might nonhuman personhood grant similar liberties or privileges to the natural realm?<sup>10</sup>

### *Implications*

While Australian and US cases use different mechanisms, they affect similar results. Legal persons participate in the democratic process of the states in which they reside (using both meanings of political state in this instance). Each inserts the corporate into the relationships of democracy and governance, melding the 'privileged, "rational", white male template' (Blanco & Gear 2019, p12) deeper into the fabric of the state. Can this privilege now be turned on itself?

Rather than situating possibilities within the growing rights of nature movements, which seek solutions to environmental damage via rights-based mechanisms, I have taken a different turn. This is not because I am rejecting the impulse to assign rights to nature, quite the opposite, I have sympathy for that approach. However, the idea and implementation of human rights has sketchy success—one needs only to turn to the pages of the daily press for evidence of human rights violations—whereas the corporate legal personhood framework has been resoundingly successful at garnering protections, rights, and political sway. My intuition, or provocation, is that the structure of corporate personhood might more readily be harnessed and/or subverted to protect the nonhuman realm than the rights structure which has failed to comprehensively protect human beings from harms.

Moreover, given human rights derive from human dignity, it is for some difficult to then ground rights of nature. Working within the capabilities approach to justice (the approach that has most engaged with extending justice to the nonhuman realm and which is a variant of human rights approaches to justice (Nussbaum 2007)) Schlosberg suggests we might understand ecological integrity as the foundation (2012), while Nussbaum extends dignity to higher order sentient beings (2007). Fulfer (2013), an outlier in this group, extends the concept of dignity to whole ecosystems and Bendik-Keymer suggests we use wonder as a motivating principle to protect the nonhuman realm (2021).

For Watene (2016) none of these is sufficient to accommodate the Māori understanding of the dignity of the nonhuman realm. Elsewhere, I have demonstrated how the metaphysical properties of tapu, mana and mauri together constitute a concept similar to dignity which could underscore a call for multispecies justice (Winter 2019, 2022). However, aware of the fragility of human rights, it seems nonhuman rights are likely to be even more fragile. If we cannot convince humans to respect other human's rights, how can we anticipate success from rights of nature frameworks?

The rights structure is resolutely individualistic, and this is problematic for Indigenous Peoples. Moreover, the natural realm is composed of a multitude, or rather perhaps more accurately cascades of multitudes. The natural realm is human and nonhuman, one and many. Is a rights structure sufficient to represent a complex multitude? While it has been successfully harnessed to sue on behalf of discrete entities, the rights model may be less efficacious than the corporate one in demanding direct representation for the nonhuman realm within democracies. My point is that a legal suit is more likely to be successful when an individual natural being brings the suit, but less so for a multitude as would be required, say, in a case for ecocide or the comprehensive damage of climate change-induced wildfires. Instead, I am suggesting nonhuman personhood structures have the potential to rebalance democracies by mitigating the asymmetric influence of corporations and to prevent such events. Corporate and nonhuman personhood create a single identity of a multitude, providing a means to represent the diverse actors without the need to identify individuals.

More specifically, I am suggesting that if corporate legal persons have the right to participate in the democratic process, why not Te Awa Tupua, Te Urewera and Taranaki who are now also legal persons? In many ways given the visceral, immutable and total entanglement of human and nonhuman, of human in nonhuman and nonhuman in human there is even more justification for that voice/vote. Corporates, once one pierces the veil between the 'person' and multitude it represents are only communities of living people—shareholders, board, executive, workers. Taranaki, Te Awa Tupua and Te Urewera are so much more: animate, elemental, and spiritual, spatially diverse and temporally expansive, with interests encompassing all interests, all time, in all space. And



here lies their potential power (see Winter 2020a, 2022).

The current democratic system silences nonhumans. It gives little scope to the electorate's 'right to hear' from nonhumans, nor affords nonhumans rights of free speech. Indeed, its voice is drowned by the clamour of corporate and party-political interests, interests that are temporally bound to the short spans of annual reports and election cycles. However, the Supreme Court of America has ruled that the identity of the democratic agent, the speaker, is irrelevant to the right to democratic voice—it is the right of the listener that is paramount. My suggestion is that the corporate person's right to be heard can be transferred to these 'new' nonhuman persons. But how?

I signalled at the outset I do not intend to develop the 'how' here, simply to provide a provocation, to open the debate. It is clear, unlike corporates, nonhuman persons do not have financial resources to pour into political candidates' coffers. Could their kaitiaki, their trustees, vote? or have permanent positions on key government and international committees? Geo-regions voting from an econtology that represents all interests, all time, in all space, human, and nonhuman could be a powerful democratic voice.

The Australian and USA precedents create potential for political participation at local body and national level. While national representation of nonhuman persons is perhaps an overly ambitious objective at this juncture, representation at local body level seems objectively achievable. The suggestion is kaitiaki/trustees for nonhuman persons should have a seat on local bodies within and adjacent to their bodily jurisdictions. In doing so Aotearoa could take another small step towards decolonising its political practices. Ironically enough it is the specifically colonial precedents from the corporate examples in Australia and the USA that suggest such a voice is not unreasonable.

Given the breadth of interests a nonhuman person can represent—human, nonhuman, animal, vegetable, elemental, fleeting and very long term, minute and expansive, botanic, zoological, geological, hydrological, and meteorological—they might also act as the representatives for all nonhuman at the COPs and other international fora where decisions affecting human and nonhuman interests over all wātea (time/space) are forged.

*A seat at the table*

'Personhood' for georegions breaks the barriers that western tradition erects between human and nonhuman. I, you, we embody elements from the dawn of time—in our bones and flesh. The much vaunted and special human is also nonhuman from the outset. The western idea of person, an idea used so effectively to caste other, both human and nonhuman other, aside, is being used to bring the other back to its natural place in the fold.

Using a conventional device, legal personhood, the government and iwi have found a way to make commensurate two incommensurate epistemologies and ontologies. This is where I think we can find the crack that will allow us to subvert settler domination. A chink that allows the kaitiaki for Te Awa Tupua, Te Urewera, and Taranaki to become politically radical. I am suggesting that for once we can take the settlers' epistemological ignorance (and here I am refocussing Mills' (1997) use of that phrase) and craft something revolutionary, and we can do it by embracing two conservative moves, one legal, one political, in two other settler states, Australia and the USA.

Why might granting personhood to Te Awa Tupua, Te Urewera and Taranaki challenge the Anthropocene? What do the Acts say about these entities? Te Urewera for instance is said 'to be a legal entity with the full capacity of a legal person' (New Zealand Government, 2014, p13). Te Awa Tupua is a 'legal person with all the rights, powers, duties and liabilities of a legal person'. That sets the bar. Full capacity of a legal person includes the right to influence the political system—at least in NSW and the USA. Voting in Australia is an inescapable duty. And in NSW local body elections, it is a corporate obligation. Acting in the self-interest of the corporate is an executive obligation so that having a 'voice' in American politics is seen as a corporate obligation. The revolutionary decolonial potential of framing legal personhood status from within the dominating structures of western law and philosophy is that it elevates the latent already always entangled human, nonhuman and spiritual interests of Te Awa Tupua, Te Urewera and Taranaki. As legal persons they could demand a seat at the (democratic) table rebalancing the politics that are driving the Anthropocene.

**CHRISTINE J. WINTER** is a Postdoctoral Fellow at the Sydney Environment Institute and a Lecturer in Government and International Relations, School of Politics and Social Sciences, The University of Sydney, Australia. Her work focuses on environmental, intergenerational, Indigenous, and multispecies justice. She is the author of *The Subjects of Intergenerational Justice: Indigenous Philosophy, the Environment and Relationships* (Routledge, 2002).

### *Acknowledgements*

Thanks to the anonymous reviewers for their insights and suggestions, and innumerable commentators at a host of conferences who helped in shaping this thinking.

### *References*

Aho, Te, L. (2014). Ruruku Whakatupua Te Mana o te Awa Tupua. *Māori Law Review*, (May).

Arif, A. (2015). New Zealand's Te Urewera Act 2014. *Native Title Newsletter*.

Barraclough, T. (2013). *How Far Can the Te Awa Tupua (Whanganui River) Proposal be Said to Reflect the Rights of Nature in New Zealand?* (C. Warnock, Ed.). University of Otago.

Bawaka Country, Suchet-Pearson, S., Wright, S., Lloyd, K., & Burarrwanga, L. (2013). Caring as Country: Towards an ontology of co-becoming in natural resource management. *Asia Pacific Viewpoint*, 54(2), 185–197.

<http://doi.org/10.1111/apv.12018>

Bendik-Keymer, J.(2021) Beneficial relations between species & the moral responsibility of wondering, *Environmental Politics*, DOI:

[10.1080/09644016.2020.1868818](https://doi.org/10.1080/09644016.2020.1868818)

Blanco, E. & Grear, A. (2019). Personhood, jurisdiction and injustice: law, colonialities and the global order. *Journal of Human Rights and the Environment* 10 (1), pp86-117. DOI: 10/4337/jhre.2019.01.05

Cano Pecharroman, Lidia (2018). Rights of Nature: Rivers That Can Stand in Court. *Resources*, 7, 13; doi:10.3390/resources7010013.

Friedman, M (1970). The Social Responsibility of Business to Increase its Profits. *The New York Times Magazine*. September 13, 1970.

Fulfer, K. (2013). The Capabilities Approach to Justice and the Flourishing of Nonsentient Life. *Ethics and Environment*, 18(1), 19–42.

Goss, R. (2017) Voting rights and Australian local democracy. *University of New South Wales Law Journal*, Vol. 40 (3), pp1008-1034.

Henare, A. (2007). Toanga Māori. In A. Henare, M. Holbraad, & S. Wastell (Eds.), *Thinking Through Things* (pp. 47–67). London and New York: Routledge.

Henare, M. (2001). Tapu, Mana, Mauri, Hau, Wairua. In J. A. Grim (Ed.), *Indigenous Traditions and Ecology*. Cambridge, Massachusetts: Harvard University Press.

Hutchison, A. (2014). The Whanganui River as a Legal Person. *Alternative Law Journal*, 39(3), 179–182.

Iverson, D. (2008). *Rights*. Stockfield: Acumen Publishing Company.

Langley, J. (2017) Who coined ‘government of the people, by the people, for the people’? *Washington Post*, March 31 2017. accessed 9 April 2019 [https://www.washingtonpost.com/opinions/who-coined-government-of-the-people-by-the-people-for-the-people/2017/03/31/12fc465a-0fd5-11e7-aa57-2ca1b05c41b8\\_story.html?utm\\_term=.61a9b7bedda0](https://www.washingtonpost.com/opinions/who-coined-government-of-the-people-by-the-people-for-the-people/2017/03/31/12fc465a-0fd5-11e7-aa57-2ca1b05c41b8_story.html?utm_term=.61a9b7bedda0)

Locke, J. (1997). *John Locke*. (P. Laslett, Ed.). Cambridge University Press.

McGraw, Daniel (2019). Ohio city votes to give Lake Erie personhood status over algae blooms. *The Guardian*, 28 February 2019. Accessed 10 April 2019. <https://www.theguardian.com/us-news/2019/feb/28/toledo-lake-erie-personhood-status-bill-of-rights-algae-bloom>

Mills, C. W. (1997) *The Racial Contract*. Ithaca and London: Cornell University Press.

- New Zealand Government. (2014). *Te Urewera Act 2014*. Retrieved from <http://www.legislation.govt.nz/act/public/2014/0051/latest/DLM6183601.html>
- New Zealand Government. (2016) *Te Awa Tupua (Whanganui River Claims Settlement) Bill 2016*. Retrieved from <https://www.govt.nz/treaty-settlement-documents/whanganui-iwi/>
- New Zealand Government (2020). *Settling historical Treaty of Waitangi claims*. <https://www.govt.nz/browse/history-culture-and-heritage/treaty-of-waitangi-claims/settling-historical-treaty-of-waitangi-claims/>
- Nussbaum, M. C. (2007). *Frontiers of Justice*. Cambridge, Mass: The Belknap Press of Harvard University Press.
- O'Donnell, Erin and Talbot-Jones, Julia (2017). Three rivers are now legally people – but that's just the start of looking after them. *The Conversation*, 24 March, 2017. Accessed 10 April 2019, <https://theconversation.com/three-rivers-are-now-legally-people-but-thats-just-the-start-of-looking-after-them-74983>.
- Povinelli, E. A. (2016). *Geontologies*. Duke University Press.
- Roberts, M. (2010). Mind maps of the Maori. *GeoJournal*, 77(6), 741–751. <http://doi.org/10.1007/s10708-010-9383-5>
- Roberts, M., Haami, B., Benton, R. A., Satterfield, T., Finucane, M. L., Henare, M., & Henare, M. (2004). Whakapapa as a Maori Mental Construct: Some Implications for the Debate over Genetic Modification of Organisms. *The Contemporary Pacific*, 16(1), 1–28. <http://doi.org/10.1353/cp.2004.0026>
- Ruckstuhl, K., Thompson-Fawcett, M., & Rae, H. (2014). Māori and mining. *Impact Assessment and Project Appraisal*, 32(4), 304–314. <http://doi.org/http://dx.doi.org/10.1080/14615517.2014.929782>
- Ruru, J. (2014). Tūhoe-Crown settlement-Te Urewera Act 2014. *Māori Law Review*. Retrieved from <http://maorilawreview.co.nz/2014/10/tuhoe-crown-settlement-te-urewera-act-2014/>
- Salmond, A. (2014). Tears of Rangī. *HAU, a Journal of Ethnographic Theory*, 4(3), 285–309.

- Schlosberg, D. (2012). Justice, Ecological Integrity, and Climate Change. In A. Thompson & J. Bendik-Keymer (Eds.), *Ethical Adaptation to Climate Change: Human Virtues of the Future* (pp. 165–183). Cambridge, Mass.: The MIT Press.
- Scott, D. (2008). *Ask That Mountain: The Story of Parihaka*. Raupo, Penguin Books.
- Stephenson, J. (2001). Recognising Rangatiratanga in Resource Management for Maori Land: A Need for a New Set of Arrangements? *New Zealand Journal of Environmental Law*, 159–193.
- Stewart-Harawira, M. (2005). *The New Imperial Order*. Wellington: Huia Publishers.
- Veracini L. (2015) *The Settler Colonial Present*. Basingstoke UK, New York, Palgrave.
- Watene, K. (2016). Valuing nature: Māori philosophy and the capability approach. *Oxford Development Studies*, 44(3), 287–296.  
<http://doi.org/10.1080/13600818.2015.1124077>
- Wenar, Leif, "Rights", *The Stanford Encyclopedia of Philosophy* (Fall 2015 Edition), Edward N. Zalta (ed.), URL =  
<https://plato.stanford.edu/archives/fall2015/entries/rights/>
- Winkler, A. (2018). *We the Corporations: How American Business Won Their Civil Rights*. New York and London, Liveright Publishing.
- Winter, C.J. (2019). "Decolonising Dignity for Inclusive Democracy." *Environmental Values*, vol. 28, no. 1, pp. 9-30. doi: 10.3197/096327119X15445433913550
- Winter, C.J. (2020a). Does time colonise intergenerational environmental justice theory?, *Environmental Politics*, Volume 29, Issue 2, pp 278-296, doi: [10.1080/09644016.2019.1569745](https://doi.org/10.1080/09644016.2019.1569745)
- Winter, C. J. (2020b) Disaster! No Surprise. *Environmental Politics*.  
<https://doi.org/10.1080/09644016.2020.1865726>
- Winter, Christine J. (forthcoming 2022) *The Subjects of Intergenerational Justice: Indigenous philosophy, the environment and relationships*. London.

### Notes

<sup>1</sup> The idea of a concurrent inward-outward spiral dynamic is a recurring Māori motif—artistic, metaphysical and philosophical.

<sup>2</sup> Albeit Milton Friedman argued '[a] corporation is an artificial person and, in this sense, may have artificial responsibilities, but a "business" as a whole cannot be said to have responsibilities, even in this vague sense'. He argues the responsibility rests with the individual 'businessmen' (sic) (Friedman, 1970).

<sup>3</sup> To mangle John Wycliffe's bible's marginalia – see Langley, James A., accessed 9 April 2019 [https://www.washingtonpost.com/opinions/who-coined-government-of-the-people-by-the-people-for-the-people/2017/03/31/12fc465a-0fd5-11e7-aa57-2ca1b05c41b8\\_story.html?utm\\_term=.61a9b7bedda0](https://www.washingtonpost.com/opinions/who-coined-government-of-the-people-by-the-people-for-the-people/2017/03/31/12fc465a-0fd5-11e7-aa57-2ca1b05c41b8_story.html?utm_term=.61a9b7bedda0)

<sup>4</sup> This is not an anomaly, all voting in Australia is compulsory for human persons in Federal, State and Local Body elections.

<sup>5</sup> And I recognise there is a risk that in proposing legal personhood status may be grounds for 'nature' to vote I open the floodgate for corporates to make similar demands.

<sup>6</sup> Indirect participation in democracy by corporates abounds. Corporates, lobbyists, and industry bodies exert influence on political parties and individual politicians through direct engagement and donations They reach that same group and the public through the creation and broadcast of political messages aimed at influencing voters.

<sup>7</sup> I can find no claim that these rights derive from a conception of corporate dignity. If there were to be such an argument, it *might* be able to be mounted from piercing the corporate veil and asserting the dignity of the individual shareholders. I am not attempting that move in this work.

<sup>8</sup> Mana is term of respect, and respect-worthiness. It is a spiritual quality of human and nonhuman alike. The mana of an iwi comes, in part, from their protection and nurturing of the natural environment that is their rohe or territory. The obligation to protect rohe did not fade away with the alienation of the land under colonisation although the ability to fulfil the obligation has become hampered by the legal, regulatory and governance structures imposed by the colonists which persist in the nation. See Winter 2020b.

<sup>9</sup> Some may argue this is a romantic interpretation of the Acts. And, given the carve-outs within them that may be the case—for instance the water of the Whanganui River is not included, and in the Te Urewera Act it is possible for the government to override other

provisions should it decide to mine within its boundaries. However, the purpose of this article is to stretch the conceptual boundaries of democracy rather than critique the detail of the Acts.

<sup>10</sup> Creating nonhuman personhood status in Aotearoa has blended rapunga whakaaro and mātauranga Māori with Anglo-based legal structures. India has adopted the same device of legal personhood for rivers, glaciers and even the air. And Lake Erie in the USA was for time a 'person' although that munipale designation has been overturned by the State legislature. Neither of these latter approaches incorporate rapunga whakaaro nor mātauranga Māori, however they do use the same Anglo-based legal frames.