# The Politics of Rights of Nature

## Strategies for Building a More Sustainable Future



## OA Funding Provided By:

The open access edition of this book was made possible by generous funding from Arcadia—a charitable fund of Lisbet Rausing and Peter Baldwin.

The title-level DOI for this work is:

doi:10.7551/mitpress/13855.001.0001

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# MANAGING PEOPLE FOR THE BENEFIT OF THE LAND IN NEW ZEALAND

In 2014, New Zealand's Te Urewera Act was adopted, recognizing the forest Te Urewera as a legal subject with "all the rights, powers, duties, and liabilities of a legal person" (New Zealand Parliamentary Counsel Office 2014a, art. 11). 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. It made New Zealand the world's third country (after Ecuador and Bolivia) to adopt a national law recognizing rights of Nature (RoN).

The Te Urewera Act is an interesting case of RoN because it did not arise from RoN activism. In contrast to Ecuador and Bolivia, where Indigenous movements played a central role in promoting RoN, New Zealand's Tūhoe iwi continue to 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 New Zealand Crown negotiators as a tool for overcoming obstacles plaguing settlement negotiations.

Not coincidentally, the Te Urewera Act pioneered a new model of RoN—what we call the legal personhood model—that differs greatly from the Nature's rights model adopted in Ecuador and Bolivia. Rather than recognizing rights for all of Nature, the Te Urewera Act recognizes a particular ecosystem (the forest, Te Urewera) as a legal person. It does not delineate unique rights for the ecosystem, but extends human rights and

liabilities held by all legal persons (e.g., the rights to own property, incur debts, petition the courts and administrative agencies, etc.). Rather than rights, the act emphasizes human responsibility to care for the forest. Specific guardians are not only appointed to speak on behalf of the ecosystem but are obliged to do so in both legal and policy arenas. Moreover, guardians are embedded in new governance institutions charged with managing the ecosystem in an integrated way that recognizes it as a living being and ensures its health and well-being.

In chapter 1 we discussed how the ultimate goal of the RoN movement is to shift the paradigm underlying human legal, political, and socioeconomic systems (and consequently the systems themselves) to be consistent with Earth jurisprudence. In the Nature's rights model, RoN laws seek to advance this paradigm shift by recognizing unique RoN, which forces a rethinking of humans' relationship to Nature. Implementation has largely occurred through lawsuits seeking to rectify past and imminent violations of these rights (see chapter 4). By contrast, in New Zealand's Te Urewera Act, Earth jurisprudence principles are not reflected in the RoN provisions (which merely grant legal personhood) but rather are contained in separate legal provisions that recognize the Māori understanding of the forest ecosystem and humans' relationship to it. RoN implementation happens not through lawsuits but through the creation of a new governance system tasked with governing the forest ecosystem according to traditional Māori knowledge, values, and customs that are consistent with Earth jurisprudence.

This chapter examines the politics behind the design of the Te Urewera Act and the resulting new governance system created in Te Urewera.[1] One purpose is to show what implementation of the legal personhood model looks like when applied to territory traditionally controlled by Indigenous peoples. A second purpose is to explore the relationship between legal personhood for Nature and Earth jurisprudence in such cases. We argue that when applied to Indigenous-controlled territory, legal personhood for Nature is useful primarily for creating a legal firewall blocking the preexisting anthropocentric legal framework in order to make space for a new governance arrangement consistent with Earth jurisprudence principles. Legal personhood is not the only way to create this firewall. One could simply recognize and protect the rights of Indigenous peoples to recover

their ancestral knowledge and customs. But in the Te Urewera case, legal personhood for Nature served as a useful tool.

We also use this chapter to illuminate the relationship between RoN and Indigenous rights. We argue that, while RoN is a foreign concept to many Indigenous groups, the Te Urewera case illustrates how RoN laws can be compatible with Indigenous rights (like self-determination and preservation of culture) when such laws are used as a tool for empowering Indigenous peoples to recover ancestral knowledge and practices consistent with Earth jurisprudence.

After providing a brief history of Te Urewera and the process producing the 2014 Te Urewera Act, the chapter describes key elements of the act and discusses what legal personhood for Nature means for New Zealand's government and the Tūhoe iwi. It then describes the law's implementation over the last five years to show one example of what it looks like to put Earth jurisprudence into practice through the legal personhood model. By comparing the new governance approach with how Te Urewera was previously managed by New Zealand's Department of Conservation (DOC), the chapter shows how RoN laws incorporating Earth jurisprudence principles can produce different governance outcomes from conventional environmental laws based on Western notions of conservation.

## THE HISTORY OF TE UREWERA

To understand how Earth jurisprudence is being implemented through the Te Urewera Act, it is necessary to have an appreciation for the Tūhoe people's relationship with the forest and their 150-year struggle to restore this relationship. Te Urewera is a forested, hilly ecosystem covering about 821 sq mi on the North Island of New Zealand. It is the historical homeland of the Tūhoe iwi, who traditionally relied on the forest for all their needs. They consider the mountain Maungapōhatu to be sacred and claim to be descended from the rugged ranges of Te Urewera and the white mist clouds that cover them, earning them the nickname Nga Tamariki o te Kohu (Children of the Mist).

Because of Te Urewera's remote location, the Tūhoe iwi 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 five hundred Māori chiefs from the North Island, meant to establish British sovereignty over the island. Though the Tūhoe never signed the treaty, the Crown government nevertheless assumed sovereignty over their territory (Waitangi Tribunal 2017, pt. 1, sec. 3.3). The Tūhoe have been struggling for self-determination (*mana motuhake*) since the 1860s, when the Crown first came to Te Urewera.

During the 1860s and 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 (Binney 2009). In 1896 the New Zealand Parliament passed the Urewera District Native Reserve Act to provide for Tūhoe self-government within a formally constituted tribal district, but the government's promise of self-government was never realized (O'Malley 2014). 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, and most of the remaining land was unsuitable for farming (New Zealand Parliamentary Counsel Office 2014b, sec. 8[9]). 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 DOC. 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 iwi (roughly forty-five thousand) live outside Te Urewera and have lost their connection to the land and traditional customs. Many of the roughly five thousand Tūhoe that remain live on the edges of the forest and suffer from severe socioeconomic deprivation.

## THE POLITICS CREATING TE UREWERA'S RIGHTS OF NATURE LAW

Although the Tūhoe never signed the Treaty of Waitangi, they decided that participating in the treaty settlement process begun in the 1990s was the best way to pursue their goal of self-determination and redress

for historical wrongs. In 2002 the Tūhoe brought various claims to the Waitangi Tribunal, which held eleven hearings on Te Urewera between 2003 and 2005. The tribunal issued its report in six parts between 2009 and 2015. It acknowledged numerous instances of the Crown breaking its promises of self-governance, thus illegally subjecting the Tūhoe to extensive land loss. It also recognized that the creation of Te Urewera National Park came to symbolize dispossession of Tūhoe land.

In 2007 the roughly thirty Tūhoe *hapū* (clans) authorized a negotiating team, Te Kotahi ā Tūhoe, to conduct treaty negotiations on behalf of the entire iwi.[2] Iwi members spent a great deal of time developing their fundamental objectives before negotiating, and 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.[3]

Crown-Tūhoe negotiations began in 2008 and initially dealt with the Tūhoe demand for the 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, however. Pākehā (non-Māori New Zealanders) 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.[4] 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 iwi rejected this as inadequate to achieve their goal of reconnecting themselves 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 to be within 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" (*Dominion Post* 2012).

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 the Tūhoe never specifically asked for ownership. Rather, they asked for the return of the land, which they do not equate with ownership. As Kirsti Luke (2018), one of the lead Tūhoe negotiators for the treaty settlement and subsequently the CEO of Te Uru Taumatua (the organization representing the Tūhoe iwi), explained,

> 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.

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 personhood, ownership of the land could be vested in Te Urewera itself. Tūhoe negotiators accepted legal personhood 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. It also began to shift discussions away from the idea of Te Urewera as property.

Once the ownership issue was resolved, negotiations focused on who would speak for the forest and how it would be governed. These negotiations opened a window of opportunity for codifying Māori conceptions of Nature, and humans' responsibility to it, into New Zealand law.

## CODIFYING MĀORI CONCEPTIONS OF NATURE AND HUMAN RESPONSIBILITY

The Tūhoe, like all Māori iwi, trace their ancestral lineage to a common ecosystem—in their case, Te Urewera, which they view as a living, spiritual being. The Tūhoe do not emphasize the RoN concept, since "rights" are 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.[5] 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 Crown and Tūhoe negotiators assert that the most important part of the Te Urewera Act is not the legal personhood provision, but the provisions recognizing the Māori view of the forest and the related guardianship arrangement. Part 1 of the act begins by recognizing Te Urewera as a living being with metaphysical characteristics and ties to the Tūhoe iwi:

> Te Urewera is ancient and enduring, a fortress of Nature, alive with history; its scenery is abundant with mystery, adventure, and remote beauty. Te Urewera is a place of spiritual value, with its own mana and mauri. Te Urewera has an identity in and of itself, inspiring people to commit to its care. 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. For Tūhoe, Te Urewera is their ewe whenua, their place of origin and return, their homeland. (New Zealand 2014a, sec. 3)[6]

Section 17 of the act creates statutory guardians—the Te Urewera Board—whose purpose is "to act on behalf of, and in the name of, Te Urewera." For the first three years (2014–2017), the board comprised eight members, four of whom were appointed by the Tūhoe and four by the Crown government. Subsequently, the composition shifted to nine members: six appointed by the Tūhoe and three by the Crown. Once appointed, the board members are required to represent the interests of Te Urewera, not the Crown or the Tūhoe.

The act also removes Te Urewera from the national parks system, and consequently transfers governance authority from the DOC to the Te Urewera Board. With full autonomy to govern Te Urewera, the board is required to create a Te Urewera management plan that reflects Tūhoe customary values and law. Section 18(2) of the act states that the board must "consider and give expression" to "Tūhoetanga" and "Tūhoe concepts of management" such as *rāhui* (putting in place a temporary ritual prohibition or limitation of use); *tapu me noa* (identifying sacred places requiring respectful behavior, or *tapu*, recognizing that when the *tapu* is lifted from the place, the place returns to a normal state); *mana me mauri*

(the sensitive perception of a living and spiritual force in a place), and *tohu* (which connotes the metaphysical or symbolic depiction of things). Section 20 makes it clear that the board "must consider and provide appropriately for the relationship of iwi and hapū and their culture and traditions with Te Urewera when making decisions" (New Zealand Parliamentary Counsel Office 2014a).

For the Tūhoe, the act's provisions addressing Te Urewera's metaphysical characteristics, legal personhood, and guardianship 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.[7]

## THE MEANING OF LEGAL PERSONHOOD FOR TE UREWERA

Among RoN 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 personhood provision was important not because it granted rights to the forest but because it removed the preexisting legal framework, providing space for the Tūhoe to create a new governance system rooted in Indigenous culture and the principles of Earth jurisprudence.

Tamati Kruger, one of the lead Tūhoe negotiators for the treaty settlement and later the chair of the Te Urewera Board, 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 mind-set for centuries, over various civilizations. You are removing that. And once it's off, then there's freshness of ideas."[8]

Luke explains the purpose and impact of the legal personhood 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. (Luke 2018)

## CREATING A NEW GOVERNANCE SYSTEM FOR TE UREWERA

To understand how guardianship is practiced under the Te Urewera Act, it is necessary to understand how the Tūhoe reorganized themselves as a result of the treaty settlement process. The basic political unit within Māori society is the *hapū*, a collection of family groupings (*whānau*) connected through their ties to a common ancestor. *Hapū* members organize themselves according to *marae*—ancestral homes where people meet to discuss issues, maintain the community, and provide social support.

Traditionally, Tūhoe political authority is highly decentralized, with *hapū* having a great deal of decision-making authority. Nevertheless, Tūhoe *hapū* organize themselves into four tribal councils, each of which represents the *marae* in one of four valleys in and around Te Urewera. These valleys include Ruatahuna, Ruatoki, Te Waimana, and Waikaremoana.

In 2011 the Tūhoe created a more centralized authority structure to better navigate the treaty settlement process on behalf of the entire iwi. Te Uru Taumatua was established as the operational organization for the Tūhoe iwi, representing the "Tūhoe nation and the lands and wealth held in common for Tūhoe" (Tūhoe Iwi, n.d.-b).[9] The governing board comprises seven members representing all four tribal councils, with *marae*/*hapū* members electing their representatives. While the Te Urewera Board represents Te Urewera, Te Uru Taumatua represents the Tūhoe iwi. Together these organizations administer the new governance system in Te Urewera following the 2014 Te Urewera Act.

## MANAGING PEOPLE FOR THE BENEFIT OF THE LAND

As has been noted, the Te Urewera Act requires the Te Urewera Board (the statutory guardians) to develop an integrated ecosystem management plan for Te Urewera. In September 2017 the Te Urewera Board presented its plan, titled *Te Kawa o Te Urewera* (hereafter, *Te Kawa*), which provides the foundation for a governance system based on Tūhoe values and culture and shares the principles of Earth jurisprudence described in chapter 1. 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" (quoted in Walker 2017, 1).

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, and other sciences) governing how ecosystems function. This natural order is studied in Western science 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 an interview with Hal Crimmel and Issac Goeckeritz. After asserting that people's relationship to the land mirrors that of a child relating to his or her 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. Luke adds, "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" (quoted in Crimmel and Goeckeritz 2020).

Tūhoe culture and Earth jurisprudence are also similar in asserting that an ecosystem's natural order is so complex that humans are incapable of fully understanding it. Consequently, humans' goal should be to manage their behavior to maintain balance in this order. *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" (Te Urewera Board 2017).

Because Nature's complexity is beyond human comprehension, 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, including people. When talking about maintaining balance in the Te Urewera ecosystem, Luke notes, "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" (quoted in Crimmel and Goeckeritz 2020, emphasis in the original).

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, have an impact on them. People, too, must live off the land; it is their home. The Tūhoe reject the Western conservationist view of Nature as a museum that is to be seen but not touched. But 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 the 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" (Te Urewera Board 2017).

This idea that humans cannot control Nature, but have an interest in managing their own behavior in a way that maintains balance and order in the ecosystems on which they depend for life, is captured by a phrase so often repeated in Te Urewera that it is practically a mantra: "Te Kawa is about the management of people for the benefit of the land—it is not about land management" (Te Urewera Board 2017). 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 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" (Luke 2018).

*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" (Te Urewera Board 2017).

## GUARDIANSHIP IN TE UREWERA

Once ecosystems are recognized as legal persons with rights, the practical question arises of who can speak for Nature in human legal and policy forums. This issue is often termed *guardianship* in the RoN literature. In Western law, guardianship implies that decision-making authority is taken away from a person who is incapable of managing his or her own affairs and given to someone else. For example, courts commonly use the legal doctrine of 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 High Court of Uttarakhand recognized the Ganga (or Ganges) 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 (see chapter 8).

Many RoN activists 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 from the traditional Western legal conception. While the Te Urewera Act does establish statutory guardians (the Te Urewera Board) who speak for Nature in human institutions, the Tūhoe approach to guardianship focuses more on creating a system designed to listen to what Te Urewera itself is "saying" by discerning patterns and changes in its processes and then using this information to manage human impacts. For the Tūhoe, guardianship is not about managing Nature like one would manage a child but instead about guarding the relationship between people and Nature.[10] The best that people can do is manage their behavior to try to maintain their proper role within the ecosystem community.

The process of implementing *Te Kawa* requires recovering ancestral knowledge, customs, and practices in order to reconnect the Tūhoe iwi to the land and fulfill their responsibility as *kaitiaki* (guardians or stewards) 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 in the traditional way and is thought to know the forest better than anyone.

In 2019 Uncle Maynard, as he is affectionately known, was training a group of about ten 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, looking for patterns, and carefully observing what happens over time, the crews are (re)learning how to listen to "the voice of Te Urewera," which we interpret to mean that they understand how the ecosystem adapts and evolves naturally in response to changing conditions. [11] They then communicate what they observe to Te Uru Taumatua, the Tūhoe organization responsible for carrying out operations that manage people for the benefit of the land.

The Tūhoe view the bush crews as the real guardians of Te Urewera. As Tamati Kruger explains,

> [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.[12]

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. 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 what they observe 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 it to make operational decisions for how the Tūhoe will manage their presence in the forest.

## 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" (New Zealand Parliamentary Counsel Office 1980, sec. 4). Consequently, the criteria used to make decisions in Te Urewera differs in subtle but important ways from the approach taken by the New Zealand 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 the balance of the ecosystem.[13]

There are many examples of how this people management system has impacted governance in the forest in large and small ways. Trails going through Te Urewera are designed to benefit Te Urewera (minimizing environmental impact) rather than being convenient for people. Under the DOC, trails were made to provide the shortest, most direct routes. Now trails may meander and be longer in order to ensure minimal environmental impact. Some trails and bridges that were washed out were not repaired because they were determined to not be in Te Urewera's interest. This logic also affects the siting of structures in Te Urewera: some existing structures were removed or not maintained because of their impact on Te

Urewera, and the design and siting of new structures is determined based on the new logic of what's best for the forest.

One of the implications of having a governance system that manages people rather than Nature is that the Tūhoe recognize that they may need to adapt to changing conditions within the forest ecosystem over time. A good example is how they are planning for the results of climate change—which, they recognize, will inevitably alter conditions in the forest ecosystem. But rather than plan to insulate themselves from these changes (by trying to control Nature), they are trying to develop processes for adapting to these changes, adjusting human society to fit into the ecosystem as it evolves. For example, the Tūhoe are thinking about how they can build housing and other infrastructure that is mobile so that society can relocate to different parts of the forest as necessary given the demands of climate change.[14]

Dealing with the forest's possum population provides another example of changed governance under *Te Kawa*. The 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, but because they have no natural predators in Te Urewera (besides humans), their population skyrocketed, threatening native bird and plant species. The DOC approached this as a "pest control" problem and employed aerial spraying of the rodenticide sodium fluoroacetate, commonly called 1080. Although 1080 is extremely harmful to the environment and human health, the DOC sprayed it because it was the cheapest approach.

The Tūhoe view toward possums is more complicated. On one hand, humility toward 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. (Quoted in Crimmel and Goeckeritz 2020)

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 the eggs of native bird species at a level that could lead to the birds' 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. The Tūhoe consume the meat and sell the fur to make blankets, hats, and other goods. Our interviews with possum hunters suggest that the hunting is not seen as a pest eradication exercise in the same way that the 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 have 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 have also emphasized that they are part of the forest ecosystem and must live off the land, and that they themselves are the only predator of the possum. Our 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 Yellowstone Park when they hunt deer. Notably, the Tūhoe do so by minimizing their ecological impact.

Controlling possum populations through hunting shows how the Tūhoe are reviving traditional practices of living off the land sustainably, which allows them to conduct ecologically sustainable practices rejected by the DOC as too expensive. As Luke has noted, "DOC only employed, like, six people. We can bring five thousand, and they are not motivated by money, but by love of the land."[15]

To symbolize the Tūhoe's relationship with the land and their commitment to *Te Kawa* principles, they built New Zealand's first living building as their tribal headquarters.[16] To meet international living building standards, the Tūhoe had to meet ten stringent imperatives for ecological sustainability, including using natural materials found locally, net zero energy use, and net zero water use.[17] 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" Tūhoe Iwi, n.d.-a.). The

Tūhoe have applied the same techniques used in this building to minimize the impact of other structures throughout Te Urewera.

The Tūhoe's 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, they developed a technology to cover dirt roads with a mixture of tree sap and a fiber by-product of paper manufacturing. When sprayed on roads, it packs and seals the dirt, producing a durable, pavement-like surface. The technology was successfully piloted in 2017, and by 2019 plans were underway to expand what they call "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 hike, fish, camp, photograph, hunt, and forage for natural medicines. But *Te Kawa* principles do require some changes in behavior compared to those of prior 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 camp and light fires, and campers are required to carry out their trash. Visitors are not allowed to chop down native trees without permission. In short, visitors are welcomed to continue traditional recreational activities, but must do so in a way that respects the land.

Certain commercial activities (e.g., hunting, fishing, logging, diversion of water for hydroelectric power, etc.) are still allowed under *Te Kawa*. But people who wish to engage in commercial activities must sign Friendship Agreements with Te Urewera (via its legal guardian, the Te Urewera Board). These Friendship Agreements replace the previous concessions regime applied by the DOC. While the agreements are similar to the previous concessions regime in many ways, *Te Kawa* states that they are "designed to achieve new and broader standards of integrity for [people's] impact uses on the living system of Te Urewera. A Te Urewera Friendship Agreement admits that opportunities are afforded only where we can demonstrate loyal affection to Te Urewera values and her need to continue her complex balancing act amongst her living system. The collaboration needed by holders of Friendship Agreements will enact and instill robust examples of the principles required of all interactions with Te Urewera. Their design will ensure the mauri of Te Urewera is not diminished through external pressures, considerations or expectations" (Te Urewera Board 2017).

The reframing of concessions to Friendship Agreements is meant to transform people's worldview away from seeing Te Urewera as a stock of resources to be extracted and instead toward seeing it as a living ecosystem in which people are embedded and with which people have reciprocal relationships. The Friendship Agreement framing was a conscious strategy for establishing standards of behavior that were different from measures of extraction and contamination common to environmental impact assessments. This is a good example of how implementation of New Zealand's RoN laws are attempting to stimulate a paradigm change. Tūhoe leaders are quick to point out that true friends do not exploit, take advantage of, or harm one another. While you may take resources from a friend when needed, as a true friend you will return the favor. Friendship Agreements are meant to inspire people to understand how their activity fits into and affects the complex web of life in the forest ecosystem and to manage their activity in a way that preserves Te Urewera's right to exist, maintain its natural cycles, evolve naturally, and be restored when damaged.

## CHAPTER SUMMARY

Te Urewera presents a very different conception of the practice of RoN from that seen in Ecuador or Bolivia. In Ecuador (the Nature's rights model), RoN is enforced through the courts via lawsuits seeking restoration after a violation has occurred or is imminent. By contrast, the Te Urewera Act (the legal personhood model) provides a more proactive approach. The ecosystem's right to exist, to maintain the functioning of its cycles, and to be restored are not formally recognized in law but are protected in practice through a governance system that incorporates Earth jurisprudence principles.

In many ways, Te Urewera is a relatively easy case for implementing Earth jurisprudence. Because the forest was conserved as a national park, the ecosystem is largely intact, with minimal human development. The remaining Tūhoe population living in the area is small enough that it will be able to live well within the forest's carrying capacity for years to come. In this way it is different from New Zealand's 2017 Te Awa Tupua Act, which follows roughly the same model for structuring RoN. Implementation there will prove more challenging as it addresses a watershed with extensive economic development and multiple and diverse stakeholders.

Nevertheless, the Te Urewera case shows how legal provisions extending legal personhood to Nature can facilitate a transition to Earth jurisprudence when used as a legal tool allowing Indigenous peoples to recover ancestral knowledge and customs consistent with Earth jurisprudence. In these circumstances, RoN can be compatible with such Indigenous rights as self-determination and preservation of culture. The Te Urewera case also illustrates how Indigenous customary law and practices are important not just because of cultural tradition but also because they evolved over centuries to effectively maintain human communities' proper role in the interconnected web of life that constitutes the local ecosystems on which they depend for their well-being. It is, of course, true that people also benefit due to their dependence on the land. But people can only realize these benefits to the extent that they manage their own behavior in a way that protects the entire ecosystem by recognizing the intrinsic value of each member of the biotic community and ensuring its right to exist and responsibility to contribute its part to the system.

Tūhoe leaders see the legal personhood provision in the Te Urewera Act as important primarily because it provides a legal tool for pausing the preexisting Western legal, economic, and governance framework, thereby creating a space for the Tūhoe to replace this with an Earth-centered governance framework consistent with their customary practices and values. This is why Tūhoe leaders (and Crown negotiators) do not see the legal personhood provision as the most important element of the act. More important are the act's provisions that codify the Tūhoe understanding of the forest and humans' relationship to it, and which have empowered the Tūhoe to retake their traditional place as *kaitiaki*, or guardians, of Te Urewera.

The Tūhoe could have enacted their Earth-centered governance framework without the legal personhood provision if they had the authority to do so, but they did not have that authority. They needed the legal personhood provision to remove Te Urewera's status as property owned by the Crown and subject to the Crown's regulatory framework. This was the real power of the RoN legal provision.

But what about Western societies, where transitions to Earth jurisprudence systems are not directly a process of recovering ancestral knowledge, but rather guiding a society-wide paradigm change? In these societies, the

switch to Earth jurisprudence involves transforming legal, economic, and governance systems in a fundamentally new way that requires changing people's understanding of humans' relationship to the rest of the natural world. As we might expect, RoN legal provisions operate very differently in these contexts. In the next two chapters, we analyze how RoN jurisprudence is evolving as laws are applied in policy arenas without a strong Indigenous presence. Chapter 7 examines the evolution of the Nature's rights model in the United States, and chapter 8 addresses the evolution of the legal personhood model in Colombia and India.