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# Testing the (legal) waters: interpreting the political representation of a river with rights in New Zealand

– *“Let’s talk to the river, instead of talking about the river”*

*Wouter Blankestijn & Anna Martin*



Department of Urban and Rural Development  
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## Abstract

In 2017, after protracted litigation between Māori iwi (tribe) and the Crown, the Whanganui River in Aotearoa/New Zealand was granted the status of a 'legal person'. The river is described as an indivisible and living whole, so-called Te Awa Tupua. As a legal person, it includes all physical and metaphysical elements and has the right to flourish in order to maintain its health and wellbeing. Its interests are represented by two appointed 'human faces' and other actors including a strategy group.

Potentially fraught with problems of misrepresentation, as well as a host of philosophical issues on speaking on behalf of an arguably "voiceless" and vulnerable actor, communicative problems arise how to actually politically represent a natural-cultural entity in practice. While the postcolonial context is unique and carries along dimensions of justice to the Māori, the development may also be understood against an ecocentric background. This includes the worldwide movement of earth jurisprudence, which advocates for giving rights and political agency to nature. We investigate by which epistemic and ontological claims the agency, and thereby the interests of the river are planned to be realised in the deliberative arena and inform policy.

This thesis offers a qualitative, phenomenological study of how the different views on politically representing the river are juxtaposed, and how they are practically and communicatively manifested. In New Zealand we conducted eight semi-structured interviews with a selection of the appointed representative actors and the people who either appointed or advise them. A thematic analysis shows how the representative actors put an emphasis on a holistic view on, and a personal connection to the river, which both serve as a preferred moral relation in order to represent. Moreover, the concept of 'legal personhood' gives further standing to the river, but brings about different connotations.

The findings are theoretically deepened using (political) representation theory, which shows (1) a pre-political relation based on a 'communicative ethic', internalising the river's interests and (2) a political representative practice making both the river's interests and the relations to it present by a deliberative process. This is aimed to result in a sustainable, reciprocal relationship with the river. To conclude, this study offers an empirical exploration on how the recognition of the rights of nature are implemented and given meaning to, and shows the importance of discursive plurality and ethical relations on top of the legal aspect to bring about an ecocentric paradigm shift.

*Keywords:* earth jurisprudence ; rights of nature ; political representation ; ecocentrism ; human-nature communication ; representative relations ; river ; indigenous justice ; environmental justice ; communicative ethic ; thematic analysis ; New Zealand



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## Abbreviations and specific terms

Aotearoa	Māori name for New Zealand, literally The Land of the Long White Cloud
hapū	Māori subtribe
hau	Ethical Māori concept of gift giving and taking ; maintaining a reciprocal relation with nature (Henare 2001)
iwi	Māori tribe
kaitiakitanga	guardianship, a respectful way of interacting with the environment and maintaining a balance (Tipa 2009)
legislation	When there is agreement on a Settlement deal, New Zealand Parliament passes it into law, followed by the implementation process. Legislation regarding the Whanganui River’s legal status passed in 2017.
mana	Ethical Māori concept of power, authority and common good (Henare 2001)
Māori mātauranga	The indigenous peoples of New Zealand/Aotearoa, of Pacific descent Knowledge
Ngā Tāngata Tiaki o Whanganui Settlement deal	Post-settlement governance body for the Whanganui iwi  The resolution of a lawsuit between the Crown and a claimant group (in this case the Whanganui iwi). The Whanganui Settlement Deal passed in 2014.
TAT	Te Awa Tupua
Te Awa Tupua	The Whanganui river as an indivisible whole (including all its physical and metaphysical aspects), now being a legal person
Te Karewao	The advisory group to Te Pou Tupua
Te Kōpuka	The strategy group which will develop a strategy document to guarantee the river’s (TAT’s) health and wellbeing
Te Pou Tupua	The ‘human faces’ of (rather than guardians, as the river is believed to be a guardian over the people as well)
The Crown	British Commonwealth
TPT	Te Pou Tupua
Tupua Te Kawa	The four intrinsic values forming the baseline of TAT’s legislation. (see <b>Appendix 1</b> )
whakapapa	Personal connection to an environmental entity (river, mountain) based on genealogy

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*He taonga nō te whenua me hoki anō ki te whenua*

What is given by the land should return to the land

- Māori proverb

# 1 Introduction

A worldwide, growing movement of recognising the rights of nature is emerging (Espinosa 2017). The first major acknowledgement was the inclusion of nature's rights within the Ecuadorian constitution in 2008 (Tanasescu 2014), and since then similar examples followed including Bolivia establishing eleven rights for nature or Mother Earth, which was also taken on by the UN Climate Talks in 2009<sup>1</sup>. Such reforms were preceded by modest decrees giving humans and NGOs legal standing on e.g., contesting policy on behalf of nature, as seen in the Aarhus Convention of 1998 (Jans & Marseille 2010).

The Whanganui River flowing on the North Island of New Zealand/Aotearoa, was declared to be the world's first river receiving the status of a legal person, after a protracted litigation process involving the Māori and British Commonwealth (the Crown) (Salmond 2014). In March 2017, the national Parliament officially passed the final legislation, securing the new status of the river into law, ready to be implemented (New Zealand Parliamentary Counsel Office 2017). This historical event served as both a local and global example. Nationally, Mount Taranaki will receive a similar status as the Whanganui River<sup>2</sup>; and internationally India followed suit by declaring the Ganges and Yamuna rivers living human entities right after the New Zealand Bill was passed<sup>3</sup>. Moreover, the US<sup>4</sup> and Australia<sup>5</sup> are in the process of granting rivers legal rights as well.

The Whanganui iwi (Māori tribe), sees the river as their spiritual ancestor. They define the Whanganui River as an indivisible and living whole, from the mountains to the sea, containing all its physical and metaphysical elements, named *Te Awa Tupua* (New Zealand Parliamentary Counsel Office 2017). The genealogical bonds between the Māori and the river are illustrated by the saying "I am the River, the River is me" (*Ko au te awa. Ko te awa ko au*), which symbolises the inseparable connection between all elements. This status is now embedded in law by the Whanganui River Claims Settlement Act in 2017 (ibid.).

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<sup>1</sup> The Guardian, *Bolivia enshrines natural world's rights with equal status for Mother Earth*: <https://www.theguardian.com/environment/2011/apr/10/bolivia-enshrines-natural-worlds-rights>

<sup>2</sup> The Guardian, *New Zealand gives Mount Taranaki same legal rights as a person*: <https://www.theguardian.com/world/2017/dec/22/new-zealand-gives-mount-taranaki-same-legal-rights-as-a-person>

<sup>3</sup> BBC, *India court gives sacred Ganges and Yamuna rivers human status*: <http://www.bbc.com/news/world-asia-india-39336284>

<sup>4</sup> The New York Times, *Corporations Have Rights. Why Shouldn't Rivers?* <https://www.nytimes.com/2017/09/26/us/does-the-colorado-river-have-rights-a-lawsuit-seeks-to-declare-it-a-person.html>

<sup>5</sup> The Guardian, *It's only natural: the push to give rivers, mountains and forests legal rights*: <https://www.theguardian.com/australia-news/2018/apr/01/its-only-natural-the-push-to-give-rivers-mountains-and-forests-legal-rights>

Historically, when the British colonised New Zealand in the late 19th century, the river degraded ecologically by for example the extraction of minerals and exploitation for hydroelectric power (ibid.). The cultural ties of the Whanganui iwi were not recognised and their loss of control over their natural environment caused many grievances (Iorns Magallanes 2015). Arguably this may be a classical legacy of capitalism, alienating people from nature and commodifying the environment as parts, rather than view it as an interconnected whole (Harvey 1993). The new legislation is supposed to give compensation to the Māori, not only by ensuring “the health and well-being of the river” (New Zealand Parliamentary Counsel Office 2017), but also the possibility of representing the river’s rights and interests. Two people, jointly appointed by the iwi and the Crown, serve as the official ‘human faces’ of the river (*Te Pou Tupua*), supported by an advisory trust (*Te Karewao*). Furthermore, a strategy group (*Te Kōpuka*) was established, comprising different representatives with interests in the river (such as iwi, local authorities, as well as actors from different organisations and sectors). Their goal is to offer guidance in enhancing and maintaining the health and wellbeing of *Te Awa Tupua* by formulating a strategy document<sup>6</sup> (New Zealand Parliamentary Counsel Office 2017). Furthermore, for the purpose of the Whanganui River Settlement, a post-settlement governance entity was established for the Whanganui iwi<sup>7</sup>.

The phenomenon of giving legal status arguably symbolises the reconciliation of an indigenous cosmology with contemporary environmental jurisprudence. Indeed, the standing of natural objects (or now rather subjects) in relation to humans and their development is now contested, creating more space for nature’s rights and vice versa. The Māori concept of *kaitiakitanga* shows a deep connection to nature, based on “guardianship, protection, preservation and sheltering” (Te Ahukaramū Charles Royal 2018) and describes humans as not being superior to the natural world, but rather part of it by a reciprocal relationship (Iorns Magallanes 2015). This concept of legal rights is regarded as a ‘vehicle’ to rediscover these different nature-human relationships (Morris & Ruru 2010). Moreover, entitling the Whanganui River as a legal entity can be seen as a process of recognising these Māori concepts in water management (Harmsworth, Awatere & Robb 2016). It reconceptualises the definitions of what can be considered a legal person, challenging the human-centred status of the concept (Hutchison 2014), up until now mainly used for corporations, trusts and so forth. The unmooring of the legal personality concept from these human-centred contexts into the nature and environmental sphere presents a novel direction but is not without its conceptual and practical problems.

Figure 1. Location of Whanganui river catchment on the North Island of New Zealand.

Source: James Dignan



<sup>6</sup> Appendix 2 gives a more elaborated overview of the different roles and Appendix 3 visualises the official representative structure

<sup>7</sup> Explanation given by the trust’s official web page: [http://www.ngatangatiaki.co.nz/?page\\_id=515](http://www.ngatangatiaki.co.nz/?page_id=515)

## 1.1 Problem formulation

The representation of nature is subject to anthropocentric, political, philosophical, and communicative elements that render the process less than straightforward. For example, the Māori colonialist legacy and tensions around indigenous and environmental justice question whether the river representation is an effort mainly aimed at political reconciliation of a wronged minority, or ‘nature reconciliation’ aimed at restoring the health of an ecosystem. This question reasons from a modern human-nature divide, however this divide is not as prevalent in Māori cosmology. Anthropologist Anne Salmond (2014) explains that in the Māori ontological worldview nature and people are “bound together” (p. 294) and Tipa (2009) further argues that “no distinction is made between the inanimate and the animate or between abiotic and biotic” (p. 99). From a philosophical point of view, questions arise about whether we can ever apprehend and represent the interests of nature. Are the individual parts of the river considered or possibly scrutinised in favour of a holistic “personified sum total” (Cullinan 2011 see Tanasescu 2016, p. 118)? The recognition of this worldview and thereby the rights of nature, which in New Zealand is now taken into consideration, could possibly debunk this human-nature divide. Still, practical problems arise from this phenomenon: how do we actually represent and communicate with an aggregated entity, in this case a river including all its living organisms and communities, practically and with which legitimacy? Can this belief in nature as an agent be reconciled within a dominating Western legal framework?

Within the growing rights of nature movement there is a strong call of recognising nature’s agency, however differing views coexist on how this representation should be realised. Overall, the central problem here is that if we accept nature’s agency legally and politically by rights, there are multiple ways of knowing and deciding upon what it wants and judge who is capable and legitimised to know, which will be further elaborated on in the theoretical framework. The Whanganui case has been chosen to illustrate this problem for (1) the legitimised status of nature and its agency by law and (2) its clarity on which individuals and groups represent the natural entity, as opposed to other cases which have been placed in rights of nature movement (Tanasescu 2016, p. 123).

## 1.2 Research aim and questions

Earlier research on *Te Awa Tupua*’s development has been mainly written from a law perspective. The legal aspects of (earlier versions) of the Settlement Bill are claimed to rather implicate a compensation of the Māori community rather than the rights of nature alone (Strack 2017). Still, Barraclough (2013) concludes that the social implications should be further researched upon, in which we see rights of nature not solely as a legal movement, but rather as a social-symbolic one. Now the legislation is established, which social implications do the representative actors want to carry out?

Our research aim is to identify and juxtapose different kinds of views on political representation within representing the Whanganui River now it is considered a legal person (*Te Awa Tupua*). Following this aim, we identify and discuss the conceptions about the representative processes and their implications for realising rights of nature in this case. Within these management processes we also analyse how the representatives understand their perspectives as voices of the river based on their personal, organisational, and professional backgrounds, and how these actors with different views of the river collaborate in the representative process. To assist this aim, we give an overview of central concepts of a more ecocentric discourse before elaborating on political representation theory, which guides us how actors within this new framework phenomenologically make sense of the river’s representation in practice (e.g. roles, criteria, and claims).

Our main research question is distilled from the aim as follows:

**How, and with what ethical and communicative implications, is the Whanganui River (*Te Awa Tupua*) planned to be politically represented as a legal person when implementing the legislation?**

We investigate this phenomenologically from the perspective of those formally involved with representing it, interpreting it, and communicating its wishes. The following sub-questions (SQs) assist us in answering the main question:

- SQ1: Which different (epistemological and ontological) worldviews or knowledge systems regarding the river (nature) can be identified and how do they cooperate?
- SQ2: Which (moral) relations are deemed to be important to represent *Te Awa Tupua*?
- SQ3: Which representative criteria are identified?
- SQ4: Which communicative practicalities and challenges emerge?

Moreover, throughout the thesis we aim to reflectively put the findings in the discourse of granting rights to nature and earth jurisprudence, before making final implications at the end of this work.

In each of these questions we identify possible opportunities and challenges regarding the future implementation process of TAT's legislation. Chronologically, SQ 1 will be addressed in section 5.1, SQ 2 in section 5.2, and both SQ 3 and SQ 4 will be elaborated on in section 5.4. Within the following Analysis (**Chapter 6**), the questions come together by offering (critical) implications that are theoretically explored, followed by a visualisation of an abstracted representative cycle as interpreted by our findings.

## 2 Ecocentrism across fields: a brief overview

In the ethics and law fields, concepts such as land ethic (Leopold 1949) and earth jurisprudence (Cullinan 2011 see Tanasescu 2014) claim natural entities have interests and preferences which, by acknowledging their juridical existence, can be politically and legally enforced and expressed (Stone 1972). This rationale arguably empowers the notion of nature having (independent) agency rather than seeing it purely as a resource to exploit, even though Tanasescu (2014) emphasises there is a grey area between both definitions<sup>8</sup>.

A traditional distinction in environmental ethics, regarding human relations to nature, is made between a utilitarian-anthropocentric, and an ecocentric approach<sup>9</sup>. The utilitarian approach can be argued to be anthropocentric, in which nature serves human purposes; whereas an ecocentric approach sees nature and natural entities as having their own intrinsic values (Norton 1991; Thompson & Barton 1994).

Berry (2006) argues that in modern times, nature is not part of human's physical and psychological beings anymore. People have lost their connection to the natural world, creating a human-nature divide which should be dissolved to avoid human moral exceptionalism (Schillmoller & Pelizzon 2013). This legal movement is conceptualised as earth jurisprudence (Berry 2006, Cullinan 2011).

Much of the earth jurisprudence discourse uses the concept of reciprocity, in which the earth sustains all living beings, centralising its mutual dependence and giving "formal recognition to the reciprocal relationship between humans and the rest of nature" (Filguiera & Mason 2009, p. 3). Similarly, in Māori ethics the concept of *hau* is prevalent, symbolised as the "breath of life" (Salmond 2014 p. 292) or the "ethic of spiritual power of obligatory reciprocity in relationships of nature" (Henare 2001 p. 213)<sup>10</sup>. Culturally, it "was established as a complex totalising system of obligatory gift exchange infusing Māori social, economic, and religious life with profound implications for the management and guardianship of the natural world" (ibid.), but this approach was interrupted due to the colonial history of New Zealand, using rather Cartesian dualist, scientific thinking within natural resource management (a.a., pp. 211-212).

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<sup>8</sup> The author criticises the comparison by rights of nature advocates that the liberation of nature is similar to the liberation of slaves. If a human is owned in any possible way (even when taken good care of), then that is a harm in itself, as an abuse of her/his dignity. However, if you own a piece of land (such as a forest) and you take good care of it, does this necessarily mean you harm its dignity?

<sup>9</sup> However, from an animal ethics perspective, Singer (1975) identifies utilitarianism not as anthropocentric per se, as he claims it encompasses all sentient beings, being subject to the same rights.

<sup>10</sup> The concept of *hau* has a multilayered definition. For a detailed description, we would like to refer to: Henare, M. (2001) *Tapu, Mana, Mauri, Hau, Wairua: A Māori philosophy of vitalism and cosmos*. In J. Grimm (ed.): *Indigenous Traditions and Ecology: The Interbeing of Cosmology and Community*. pp. 197 - 22



Granting rights to nature should result in a more ethical treatment of natural entities (Tanasescu 2014). However, only inclusion in the legal arena is not enough, as it also asks for more representation in political decision-making processes (ibid.). This means, in effect, that nature is given both positive as well as negative rights. The author also states that contemporary political representation is increasingly mediated by claiming rights: this “hegemony of rights’ in the political discourse is explained as having a certain “moral appeal” in today’s lack of trust in (national) governments, making the boundaries of what represents non-humans blurred (Tanasescu 2016, pp. 51-52). When a subject is owed justice, rights are recognised, and non-humans are generally not considered things anymore (a.a., p. 61). Hence, attribution of rights in a legal political discourse is seen as central to instilling moral obligations toward the rights-holder, nature in this case. The challenge of legally enforcing and representing natural entities was brought up by Stone back in 1972. He argues that when someone (being humans, companies and in this case a natural entity) is incompetent to manage their own legal affairs, a guardian, or trustee (terminology may vary) is given authority by court to represent the rights of the entity in their name, granting standing in their own right.

Linking the field of environmental democracy to environmental communication, Peterson et al. (2007) lead their analysis by following Leopold (1949)’s concept of land ethic. The authors call upon the field of environmental communication to facilitate a more inclusive egalitarian land-community, which has the responsibility to develop ways of translating voices of non-humans, such as natural entities. With our thesis, we take on the challenge, “to interrogate the human relationship with and ethics toward nature as mediated through communication practices and ideologies” (Cox 2007), in our case, as embedded in (political) representation praxis of the Whanganui river.

Consequently, we use (political) representation as a key concept in bridging the human-nature dichotomy. We conceptualise representation from a traditional, anthropocentric perspective before problematising the difficulties of applying this to a nature representation context and how it serves as conveying a (moral) relation.

### 3 Theoretical framework

Political representation is not a new concept. In any larger, complex society that cannot be coordinated based on direct participation or shared norms, speaking on behalf of someone else, for example a constituency, helps realise the rights and interests of those who cannot or choose not to participate (Burke 1776/1906). Politicians become their mouthpieces, and they can check the validity of their representation by contesting their claims or voting for someone else (Sawer 1998). Hence, such representatives are accountable on a transparent level, at least in well-functioning democracies (Pitkin 1967). However, there seems to be a general difficulty in ascribing legal and political rights and representatives to non-human entities (Garner 2013). The author describes that they cannot express their preferences on a linguistic level, contest claims or vote. We explain how other authors try to expand the boundaries of what is considered (political) nature-human communication.

The following chapter helps us define how the representatives that are involved within the Whanganui case make sense of their roles and make claims about their representation processes regarding the river as a legal person (and the accompanying challenges or normative statements involved). We offer an overview of its theoretical definitions, assumptions, (anthropocentric) limitations and communicative challenges within the deliberative arena.

Our theoretical framework is three-fold. Firstly, we explain aspects of classical political representation theory, to illustrate the formal characteristics of the Whanganui case being embedded in legislation; as we deem them important regarding the formal (legal) nature of the case. Secondly, we argue that, in order to enfranchise nature's interests, the discussion whether nature is considered to be voiceless or not should be elaborated on, using a non-anthropocentric context. Finally, we illustrate a rather relational view on representation (concerning the representation of nature and its difficulties regarding enfranchising its interests), which shows the classical view is inadequate and needs to be revised.

We argue that representation should be an evolving concept that increases its scope following the gradual attribution of rights to marginal cases, starting with women, the disabled, persons of colour, animals, and the environment. This is consistent with the aim for mitigation of both social and natural injustice, which is also present in for example the climate justice movement (Schlosberg & Collins 2014).

#### 3.1 Classical representation: formal criteria

A classical theory of representation is offered by Pitkin (1967), who defines the concept as the process of representatives making the absent present (again) in the political arena (p. 81). Political representation happens when political actors make claims, act in the name of others, symbolise or advocate for particular interests. Moreover, the author distinguishes representation as 'standing for' (describing, mapping, or symbolising certain ethical values for example) and representation as 'acting for', literally acting or speaking on behalf of the

constituent. Still, these implications invite further questions. For example, on which basis representatives have the means to represent and to which standards? How can a representative actor maintain a balance between being an independent agent with individual interests versus mediating the constituent's interest, leaving the definition quite vexed?

Pitkin further argues that by distinguishing which view of representation is explored, these differences in conceptualisation can be partially conciliated. She identifies four kinds of representation: formalistic, symbolic, descriptive, and substantive. In short, formalistic representation stands for the formal arrangements representation, made up by (1) authorisation (why the representative got appointed) and (2) accountability (the responsiveness of the constituent being able to give feedback). Secondly, descriptive representation depicts the similarity between the representatives and the "average" of the represented. Thirdly, substantive representation defines the activity of the representatives to represent the interests of the constituent. Lastly, symbolic representation stands for the subjective perceptions taken from the participant's perspective, which are embedded in for example the meanings representatives have regarding those being represented. To give a common environmental example, climate change is often represented by the symbol of a polar bear standing on a melting iceberg, which assumes a 'standing for' relation rather than an 'acting for' relation between the representative (the image of a polar bear) and the represented (the climate) when such a symbol is used (Boström & Ugglå 2016). On the other hand, 'acting for' considers conceptualisations of, for example, standards of consent and legitimacy.

## 3.2 Criticising anthropocentrism in representing nature

Building on the human-centred classical theorists before, other scholars bring more difficulties to the representation concept when applying it to nature. Non-human beings are often perceived as voiceless and therefore unable to legitimise or present their own interests or concerns.

Goodin (1996) argues in favour of enfranchising nature's interests, whereby the representation of nature's interests *by others* is necessarily required. This however brings up certain complications. It is the question for example whether the representation of nature's rights (by a guardian) is the *right* way of enfranchising nature, as the interest of one agent is internalised in that of another, whereas the democratic maxim is an "equal consideration of interests" (a.a., p. 837).

Still, Eckersley (1999) argues for special discursive procedures based on defensible morality claims, for which proxy-representatives and guardians are insurmountably necessary. She declares the flaws of nature-human communication (as problematised within Habermas' discourse ethic) to be "arbitrary". She observes that the problems of representation affect any context, human as well as nonhuman, and that this should not be an excuse to withhold such rights for the latter. O'Neill (2001) wonders with what kind of legitimacy nature can (theoretically and practically) speak in the deliberative arena as well. Similar to Pitkin, the author demarcates three sources of representative legitimacy, being (1) authorisation and democratic accountability, (2) presence (representatives must have shared identity with the constituencies) and (3) epistemic values (knowledge and judgment claims by humans). Still, he argues only the latter is possible when representing nature, as he claims humans cannot have a direct dialogue with nature and poses that a careful combination of science, expertise and discourse should be used in place of this.

### 3.2.1 *Nature as a marginalised and 'voiceless' actor*

Other contemporary theories take on representation of historically disadvantaged groups. Feminist and decolonial theory has been used to criticise who speaks on behalf of whom (Mohanty 2003). Here, one cautions about further subjectification and recolonisation of others' perspectives by prescribing certain views to them. Further, in the context of political

equality, Williams (1998) distinguishes three dimensions of the concept, being dynamics of legislative decision-making, the nature of constituency-representative relations, and the principles for assembling citizens into their respective constituencies, summarised as voice, trust and memory. The voice aspect argues for not only the enfranchisement of (marginalised) groups, but also for political equality and their representation to secure their “distinctive substantive interests in politics” (p. 74). She further argues that people outside of the (marginalised) group do not have the full knowledge of their interests and concerns, and therefore the group itself should be present within the political representative process. Building onto this emancipatory justice movement, Wong (2009) uses Rawl’s (1993) moral personhood theory to critically advance cognitively disabled persons’ rights for moral consideration, even though being unable to speak within deliberative processes. She claims non-human entities could receive the ‘moral treatment’ in political deliberation as well, despite their communicative difficulties.

To conclude, nature arguably can be recognised as an (aggregated) marginalised group of individuals, similar to women, ethnic minorities, disabled individuals, and animals, having the right for an extension of democracy’s boundaries (Matarrese 2010). The Whanganui River has extensively been polluted and exploited for human-use and can be considered equally mute in its ability to contest policy or advocate for its interests. In our data analysis we show whether the Whanganui River is indeed considered mute by the different representative actors, and how this is (morally and practically) expected to be dealt with.

### 3.2.2 *‘Extending’ communication to the natural world*

Some authors do not only emphasise that nature should be emancipated to be part of the representative constituency but go a step further by not deeming it voiceless, recognising and exploring communicative possibilities with nature as well. This is arguably in agreement with the deeply rooted relationship of indigenous people around the world with their environment (Gray, 1991; Stevens, 1998 see Tipa 2009, p. 97). By taking nature’s agency into account, implications on how this communication can serve as a baseline for representation is explored.

In the literature on political representation of animals, scholars relatedly note how animals – while bereft of speech – can communicate basic preferences that we can use to determine their interests (Meijer 2013). In effect, they ‘vote with their feet’, as far as they can clearly express opposition. On this view, a river’s drying up feedbacks a communication that current actions are harmful and need to be revised. While the literature on human-nature communication is nascent and often criticised (Milstein 2012), most of empirical literature found tends to describe this spiritual, phenomenological communication as valid, and our inability to ‘hear’ such calls are part of a critique on the Western monopoly on communication to be narrowly linguistic and rational. In this way, they join up with some key refrains of decolonial feminist theory (Mohanty 2003).

Further contributions to this body of literature include Homestead (2014), who argues that by listening to nature and recognising its “voice”, humans are able to represent it properly, by combining scientific-naturalistic, spiritual, aesthetic/poetic, and critical ways of perception and experience, which is conceptualised by Carbaugh (2007) as a “discursive diversity” (p. 70). It can be argued this pluralist standpoint is similar to what Salmond (2014) describes as interweaving different ontological world views (being Māori and Western) within water management processes in New Zealand, in which these worldviews coexist and collaborate rather than being merged, and arguably ‘mixed and matched’.

From a poststructuralist point of view, in order to acknowledge nature’s agency, humans must consider it as a ‘conversational partner’ (Cheney 1989). Haraway (1991) also emphasises, from an ecofeminist approach, the need to recognise nature’s agency to debunk the repressive human-nature dichotomy.

Except of only theoretically recognising nature as a communicative agent, other authors exemplify this in practice, studying spiritual connections embedded in their indigenous cultures (Carbaugh 1999; Kunisue 2014). Even though these cases illustrate some sort of “transhuman dialogue”, Peters (1999) calls these phenomenological explanations of dialogue illusionary, and rather rationally defines communication with non-humans as imprecise sending of signals, with no promise for (dialogical) reciprocity to happen. It is interesting to see how, quite contrary to Peters, the latter concept acts as a baseline for the earth jurisprudence movement. But how is reciprocity given meaning to and is manifested in the praxis of giving rights to nature? Does it make nature a communicative partner with a political agency or not?

Francis & Silvers (2007) try to blur the boundaries of who is having political agency by their description of how traditionally defined dependent agents (such as voiceless beings) do have some kind of ‘dependent agency’. Building on Rawls’ primary conceptions of the good and Nussbaum’s concept of benevolence-knowing trustees, the authors believe every actor (even considered voiceless) should be able to amplify their conceptions of the individual good. Hereby, they note that agency of this matter of the good is not “an all or nothing concept” (a.a., p. 331), but rather based on interactive social scripts co-constructed in society being (partly) dependent on others. Examples of how to include these actors within the deliberative justice debate are nonverbal expressions of preference (a.a., p. 325).

Similarly, Dryzek (1990) proposes a “communicative ecological ethic” as an experimental practice within a “greener” political arena. However, he bases this concept on human perceptions of feedback of nature, debunking both instrumental notions of rationality and ecological spirituality, but still acknowledging nature’s communicative competences. He argues instrumental rationality implies hierarchical domination of certain post-Enlightenment values, whereas a holistic, spiritual approach encompasses difficulties to implement (how does it practically empower an ecological-political transition?) and involves dangers of becoming “totalitarian”. Indeed, this could be a problem if one person unilaterally claims to ‘channel’ nature. A non-instrumental rationale based on local, non-generalised communication by contrast would incorporate nature’s signs into human political discourse and engender discussion of (ecological) assumptions.

Overall, theoretical contributions to the problem of representing nature, ranges from universal discursive claims based on morality (Eckersley 1999), to epistemic reasoning based on care (O’Neill 2001, 2006) to solidarity with non-humans by precursory internatural communication (Von Essen & Allen 2017). However, Tanasescu (2016) would rather see this as a step in the direction of self-perception and self-understanding, which is at the core of a relational view on political representation, which will be explained next.

### 3.3 Relational view on representation

The classical representation theories focusing on a referential view (how the representative mirrors interests of the constituency), as presented by authors such as Pitkin, are limited as not all representatives are elected by a constituency. In some (global) representative cases, territorial delineations appear (Dobson 1996) but can be considered irrelevant (Tanasescu 2016). We illustrate a relational view, which shows the performative process of representation and shows how a representative conveys a (preferred) relation when making claims.

Turning away from the classical, democratically elected representative-constituency model, Saward (2006) rather emphasises a constructivist approach of representation, in which the representative’s role in shaping claims and identities of the represented is analysed, rather than representation as just a formal establishment and result of elections.

Hereby, the performative relations between representative and the represented are taken central. This dynamic relationship is embedded in a so-called representative claim as a representative activity, which is shaped up by the elements of Maker-Subject-Object-Referent-Audience (Saward 2009). A maker of representations (M) brings to the fore a subject (S) which stands for the object of what he or she thinks to represent (O) which shows a certain relation as a referent (R) which is finally offered to an audience (A). The strength of this relational model according to the author is that “it invites us to look closely at the impact of a broad range of representative claimants, asking how, why and whom they represent (if anyone), without our very definitions determining whether and to what extent they constitute cases of representation (a.a p. 4)”. Overall, it serves the purpose of analysing the “reflections and practices” of the representatives (Boström, Uggla & Hansson 2017), rather than judging the static categories what it is constituted of, such as legitimacy, accountability, authorisation, and so forth.

Saward’s constructivist approach helps us to identify the co-constructed character of the claims and roles involved within the Whanganui case, being a representative cultural phenomenon (Saward 2006), rather than only being legally embedded within formal arrangements. Building on Saward, Tanasescu (2016) also turns away from this referential view of translating and mirroring based on “coalesced interests” (a.a p. 8-9) and defines it as a rather relational view of representation. He adds it encompasses summoning a preferred relation into being with whom or what is intended to be represented (a.a., p. 14). Derived from this relational process, two layers can be identified being (1) the privileged spokesperson which proclaims a semblance of unity with what is represented and (2) the constant activity of claim-making tightens the relationship between the representative, as political subject, to herself (a.a., pp. 16-17). Despite the interest-language (that is often recurring within representation theory) still being considered relevant to Tanasescu, it is rather epiphenomenal, or a by-product of representation, since the emphasis is on the summoned relation by making a representative claim.

All in all, Tanasescu (2016) emphasises the dynamic process of the representative practice as relying “on linguistic summoning-into-being, aided by ontological claims” (pp. 19-20) and hereby the representative defines her or himself, what she/he tries to represent and the relation between both. This is supported by a revised definition of what a representative claim actually involves, which is elaborated on as “a particular way of talking about representation that emphasises what I and others believe is the most salient aspect of the phenomenon. (p. 31)”. The author connects giving rights (to natural phenomena) as being part of this claim-making activity, showing our relationship with non-humans/nature, rather than being a result of an ‘impossible’ congruence or responsiveness which traditionally defines representation, as problematised before by the likes of Goodin (1996) and O’Neill (2001).

To conclude, we maintain that classical representation theory is rather anthropocentric, since it could be hard to ‘measure’ classical concepts such as accountability and legitimacy when nature is conceived to be ‘voiceless’ in the deliberative arena (O’Neill 2001). However, keeping in mind the legal-formal character of the case, we argue it gives space to the representative actors to give meaning to these concepts nonetheless. We also recognise the notion that nature can give communicative feedback (to a certain extent) within the context of both decolonising different (indigenous) worldviews, as well as by considering nature’s signs in a (Western) ‘rational’ communicative ethic (Dryzek 1990).

In our analysis, we operationalise parts of the different theories and conceptualisations of the aforementioned authors to analyse a broader spectrum of how representation is given meaning to and shaped in the Whanganui case.

Overall, we focus on both the formal aspects of classical representation theory, as well as relational view describing the structure of the representative practice identified, which is supported by interests and ethical commitments.

## 4 Methodology

The methodology of this study is driven by a phenomenological approach as it is “the participants’ perceptions, feelings, and lived experiences” (Guest, MacQueen, Namey 2011 p. 13) that form the main unit of analysis. However, we abstracted and organised them by interpersonal themes using a thematic analysis (Braun & Clarke 2006). We describe step by step how our data collection is carried out.

### 4.1 Data collection

The main method of data collection of this research consists of semi-structured in-depth interviews, comprising both questions created before the interviews as part of an interview guide and questions emerging during the interviews themselves (Creswell 2015). Other forms of data collection are comprised of preparatory data gathering, including the overview of ecocentrism across fields (**Chapter 2**). We also analysed relevant articles of the Whanganui case itself and similar cases. We used these writings to better illustrate certain arguments but decided to leave most of the argumentation to the description of the interviewees to retain grounding in phenomenology. Furthermore, we held approximately five informal talks during our fieldwork.

To get a fuller understanding of the situated meaning of the Whanganui river, and the important personal connection it has for the community, we felt the need to conduct the majority of the data collection in the relevant area, rather than performing only desk research and/or interviews on distance, giving justice to the local, phenomenological aspect of the case and our research. We conducted the interviews in New Zealand/Aotearoa from the 23rd of February until the 9th of March. The interviews mainly took place in the city of Whanganui, the biggest city along the river situated at its mouth, as well as in Palmerston North (headquarters of the involved local government) and Wellington (the capital).

#### 4.1.1 Phase 1: Preparatory data collection

Although we consider the conduction of interviews as our main method of data collection, we sought support in external sources. To get an overview of the Whanganui case, we globally analysed the official public act and video recordings of the Third Reading of the Bill to get an overview of the political and legal discourse surrounding the case. Furthermore, to get more background information, we kept track of news articles that focused on developments within the Whanganui case and rights of nature movement in general. This was done by irregular intervals depending on when news emerged. We also conducted an interview with a member of the rights of nature movement in Sweden (part of ecopsychology organisation *Lodyn*) and *End Ecocide Sweden* and attended a discussion about rights of nature facilitated by another member of *Lodyn*. These two activities gave us more understanding of the rights of nature movement around the world and provided an

opening to the case in New Zealand. It also gave us some insight regarding the connection between indigenous people and nature and how this is a vital element for the rights of nature movement. In like manner, to get familiar with the culture, we asked for a consultation with a researcher that has conducted multiple research projects involving Māori. One of the things she advised is to establish trust and personal relations, which made us form a strategy to establish certain contacts before we went to New Zealand but once we were there we used snowball sampling (Bryman 2012) to get more contacts. To ensure interviews beforehand we started doing online research on the appointed representatives, finding contacts for example by browsing application links concerning the recruitment of representatives for the strategy group (*Te Kōpuka*). At the end of 2017 we started contacting potential interviewees with formal emails, sometimes including a recommendation letter of our supervisor as a supporting document.

#### 4.1.2 Phase 2: Interviews and field work

The interviews were conducted with a selection of people within the *a priori* identified representative bodies of the river and/or involved by taking a purposive sample (Bryman 2012) within the different legislative framework bodies, focusing on (a) people who got appointed for a representative role and (b) people who were involved in appointing representatives or advise them.

The approached groups consist of the (1) the human faces of the river or direct representatives (*Te Pou Tupua*), (2) a strategy group (*Te Kōpuka*) involving different stakeholders with a certain interest in the river and (3) an advisory trust to the human faces (*Te Karewao*). The (appointers of) representative actors of these groups can be identified following Pitkin's (1967) concept of formalistic representation, being institutionalised: we have chosen these persons as most relevant to interview based on their legal responsibility of (in)directly representing the river's interests.

The formulation of the interview guide (**Appendix 4**) started a month before the fieldwork and was put through an iterative process of revision. The guide comprised 3 main themes, corresponding the interviewees background and personal connection to the river, the different roles and responsibilities within the legislation and how this phenomenon can be replicated and compared to the rights of nature movement. Although, the themes were always maintained, the questions varied depending on the interviewee (based on their exact role) and the content the interviewees themselves brought to the fore, showing the semi-structured nature of this method.

Other methods such as observation were considered but would be more suitable when actual meetings between members of the strategy group would be planned already and more interactive processes would be in place, which was not yet the case (to our understanding). Instead, we decided to go deeper into the preliminary thoughts on the representative claims, connecting them to the (political) representative theory presented before to be able to deduce symbolic, ethical, and ontological frameworks and normative claims from the interviews. Hence, the interviews had an anticipatory disposition where the expectations of representatives constituted the principal data.

Six out of eight interviews conducted in New Zealand were arranged beforehand, and two were arranged on the spot using the previously mentioned snowball sampling, asking interviewees for other contacts they deemed relevant for our research. The interviews lasted between 40 and 80 minutes, except for one as the concerned interviewee had less time for us than anticipated. All interviews were recorded with the consent of the interviewees, except of one due to a technical failure. Below we present an overview of all interviewees:



Table 1. Overview of the interviewees

Name	Relevant function/role	Location	Date	Recorded
Interviewee 1	Representative appointed by the Regional Council for the river's strategy group ( <i>Te Kōpuka</i> ), was a Green Party candidate for the Central Government elections, works for an iwi	Whanganui	23-02-2018	Yes
Interviewee 2	Group Manager Strategy & Regulation of Horizons Regional Council - responsible for appointing members on the strategy group	Palmerston North	26-02-2018	Yes
Interviewee 3	Strategic advisor on the Department of Conservation, which has a member on the strategy group ( <i>Te Kōpuka</i> )	Whanganui	01-03-2018	Yes
Interviewee 4	Tourism representative on strategy group ( <i>Te Kōpuka</i> )	Whanganui	02-03-2018	No
Interviewee 5	Fish & Game Council representative on strategy group ( <i>Te Kōpuka</i> )	Whanganui	06-03-2018	Yes
Interviewee 6	Chair of the main Whanganui iwi governance body ( <i>Ngā Tāngata Tiaki o Whanganui</i> ), facilitates appointment of iwi representatives on strategy group	Whanganui	06-03-2018	Yes
Interviewee 7	Member of the advisory group ( <i>Te Karewao</i> ) to the human faces ( <i>Te Pou Tupua</i> )	Whanganui	07-03-2018	Yes
Interviewee 8	Former Minister of Waitangi (Māori Treaty Settlements). Was involved in the appointment of the human faces ( <i>Te Pou Tupua</i> )	Wellington	09-03-2018	Yes

#### 4.1.3 Referral to interviewees

It was anticipated beforehand that the interviewees would be easy to track down in certain cases, as their roles are very specific within this legislation. Hence, we have asked consent of the interviewees' full names, official position and their (literal) utterances to be used in this thesis. However, by reflecting throughout the research process, we later stated that this research does not pose the aim to show how individual interviewees are thinking about representation, but we rather distinguish "themes across the body of participants as a whole" (Josselson 2007 see Pickering & Kara 2017, pp. 300-301). That is why we decided

to refer to the interviewees semi-anonymously in-text (as their roles can still be tracked down), rather than using ‘personal’ full names. It can be argued this objectifies the interviewees more and silences minorities in a decolonial context (Moore 2012 see a.a., p. 301). Yet, it does not ‘personally confront’ them and still maintains the readability for the audience (instead of referring to the interviewees by their full representative role). Still, the role of the representative body the individual belongs to or their field (such as conservation, tourism, local government) can still be seen in the above table, giving clarity of the relevant functions of the interviewees within this legislation.

We realise we do not only frame what the representatives think about representing the river and anonymise them, but by this we offer a composite representation (as in aggregated) of them, by analysing the data thematically and juxtapose and abstract them in the results.

#### *4.1.4 Complimentary data: informal field work*

Apart from conducting interviews during the field trip, we have also had informal conversations with people living in and/or visiting Whanganui, while visiting the city and taking part in recreational activity on the river. Although we decided not to include the data in our primary (thematically) analysed results (as they would in comparison be very brief and superficial compared to the interviews), we include certain remarks and opinions when relevant in the discussion, offering certain critical notes or alternative perspectives as context. Informal talks with other people in the area also helped to provide a more complete picture of the studied context, including apprehensions and expectations around the new legislation and legal status. Furthermore, we continued one interview with an informal talk, to which two iwi individuals were invited who are working with Te Urewera Settlement, which has similar implications to the Whanganui case regarding giving legal personhood status to a natural-cultural phenomenon in Aotearoa/New Zealand (see Iorns Magallanes 2015). These were particularly helpful in getting more critical public remarks about the TAT legislation and insights in similar institutional arrangements.

## 4.2 Data analysis

After the interviews were conducted and transcribed, this research follows a thematic analysis as formulated by Braun & Clarke (2006). The authors argue this process consists of distinguishing analytical themes, portraying and categorising the meanings of the collective data set, relevant to the research question. With our thematic analysis, we take a latent approach, which means we focus on the interpretative, underlying assumptions that emerge from the data, rather than semantic approach which would focus solely on the explicit descriptions offered by the interviewees, in which the analysis “is not just description, but is already theorised” (ibid., p. 13). However, in our Results (**chapter 5**) we limit to discussing the interviewees’ descriptions adding a level of interpretation, whereas in the following Analysis (**chapter 6**) we more explicitly link to a selection of the theories juxtaposed before. This has been decided upon to let the ‘interviewees speak’ (without losing sight of the research aim) before the theoretical abstraction is performed. The authors offer six potential stages of the analysis process, which we have operationalised. These stages consist of (1) familiarising yourself with your data, (2) generating initial codes, (3) searching for themes, (4) reviewing themes, (5) defining and naming themes and (6) producing the report (Braun & Clarke 2006, pp. 16-23). Codes were defined based on either pre-established formal representative components (authorisation, accountability, or other criteria) and emerging topics that came up in the interviews and seemed to define the representative practice (e.g. the holistic worldview, personal connections, reciprocity, collaborative challenges).

The interview transcripts offered us certain attitudes and claims regarding the representation of TAT. Despite the preliminary character of the case's implementation, we argue that these statements influence discourse, condition expectations and structure future action, for example surrounding the upcoming strategy and decision-making processes and are for this reason valuable to analyse and elaborate on. In addition to substantive claims, we focused on the choice of interviewees' vocabulary to illustrate the river and granting it legal personhood, as language can reveal individuals' innate attitudes and understandings (Smith 2004).

### 4.3 Limitations

We have not been able to interview either of the two "human faces" of the river (*Te Pou Tupua*) due to their busy schedules of currently collecting information about the river's status from diverse stakeholders, particularly the iwi. We realise, because of this, we are missing the perspective of two very important actors within the legislation's implementation whose inclusion may have yielded more elaborated or nuanced conclusions. Still, we received information on the roles and values of these actors through the interviewees who work have worked closely with them, and by that we partly fill this gap. This is so, because these representatives will not work in a vacuum: they are accountable to and in collaboration with the interviewees of this study, and the latter's ideas and expectations are likely to condition what these representatives can and cannot do.

Another limitation identified when approaching interviewees is the preliminary stage of the implementation of the Settlement. Even though it is indicated in the public act that members of the strategy group (*Te Kōpuka*) needed to be appointed within three months after the signing of the Bill, this has not been the case. We found that the iwi go through a longer process of selection<sup>11</sup> for the strategy group (*Te Kōpuka*) and advisory trust (*Te Karewao*), which is why we talked to a larger proportion of non-iwi representatives, of which some were selected already by the time of our field work. In the time we reached out to people involved, we found out that the majority was not selected yet and we ended up talking to members, which had been publicly appointed, rather than taking a sample of some sort of all 17 members. However, not construing it as solely a limitation, we consider the anticipatory and expecting answers from interviewees as valuable data on its own as this both reflects their ideas and will come to constitute practices. Indeed, in surveying the context this early, we have collected important baseline data against which progress made in the coming years can be assessed.

### 4.4 Ethical remarks

As an ethical remark on our methodological approach, we realise that, as researchers, we deal with certain expectations on our positionality coming from our study's research participants. We have provided the interviewees with information on our research by means of a consent form and prior (email) correspondence. This might have influenced the expectations and answers of the interviewees, what our (research) background is, and what the purposes of our research is. We approached the interviewees with research curiosity rather any intent to 'evaluate' them or judge the merits of the Whanganui case in the light of the rights of nature movement.

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<sup>11</sup> The interviewees explained the extended process of selection is due to the fact that Te Awa Tupua's legislation is focused on long-term solutions and appointments, which need careful consideration and take longer because of extended (cultural) appointment practices and traditions of the iwi and hapu.

Moreover, we want to emphasise the limitations regarding the portrayal of the indigenous cosmology in this research, having a ‘Western gaze’. As researchers we tried to portray Māori worldviews as respectfully as possible. Still, we are fully aware of our primarily Western-oriented scientific background and not being from New Zealand, which somewhat biases the research process (Creswell 2015). We focus on the phenomenological descriptions of representing the river in the anticipated practice by multiple actors, rather than an anthropological explanation of the Māori worldview behind it (for a more elaborate, anthropological description of this case we refer to Salmond 2014). With our analysis, we aimed for a certain level of abstraction, following the research aim, and we acknowledge we have not always spelled out Māori knowledge and cosmology as fully as possible. We realise this research deals with (formerly) repressed, exploited subjects (an indigenous group, the river) so a transformative approach (Creswell 2015) would be more suitable to make space for change, using more democratic kinds of methods. Our analytical approach of assessing preliminary thoughts on representation exclude more participatory approaches, which for example would give agency to the Māori to share their opinions with other stakeholders within our research, treating them as research subjects rather than objects (Halse & Honey 2005, p. 2144). As a researcher we are privileged with the position of representing the realities of other people, and we try to remain critical while appropriating their descriptions and experiences (Mauthner & Doucet 1998).

## 4.5 Contribution

We follow an interpretative qualitative research design, looking for phenomenological interpretations the different actors have on representing the river as a legal person. Creswell (2015) favours this design over a quantitative one, as it gives space to elaborate on the (subjective) meaning-making processes within our data collection. More specifically to the topic, within their study of environmental representatives, Boström, Ugglå & Hansson (2017) deem it important to qualitatively analyse the sociological dimensions of representation to “illuminate” what representatives think of their own roles and are “shaped by their organizational and professional contexts” (p. 2). This research takes on a similar approach, but adds the moral and communicative contexts as well.

By the application of representation concepts grounded in human (political) theory to the context of nature representation, our study contributes to the field of environmental communication and political theory by highlighting important gaps and needs for theoretical revision in an emerging paradigm of nonhuman political representation. Indeed, the application of representation to a (partly) voiceless (a)biotic aggregate reveals broader problems and inadequacies of traditional representation relevant also to political theorists solely addressing environmental issues from a point of departure of human rights, interests, and politics. We will re-interpret the classical concepts named in the theoretical framework by applying them to the Whanganui case and contribute to a practical, less human-centred application of these theoretical concepts, while recognising that such representation continues to be entangled in human interests and agendas. With our study’s research approach, we want to place the TAT case into the broader context of the worldwide trend of giving rights to nature, which contributes to the external validity of our thesis as well (Bryman 2012).

As a last point, the topic and described phenomenon in this thesis could also be interesting to anthropologists engaging in postcolonial theory, looking at how vulnerable ‘Others’ (whether indigenous or non-human) are represented. This is evidenced by us participating in the panel presentation “Conflicting Conceptualisations of Environmental Vulnerabilities”. This panel was part of the conference *Engaging Vulnerabilities* in

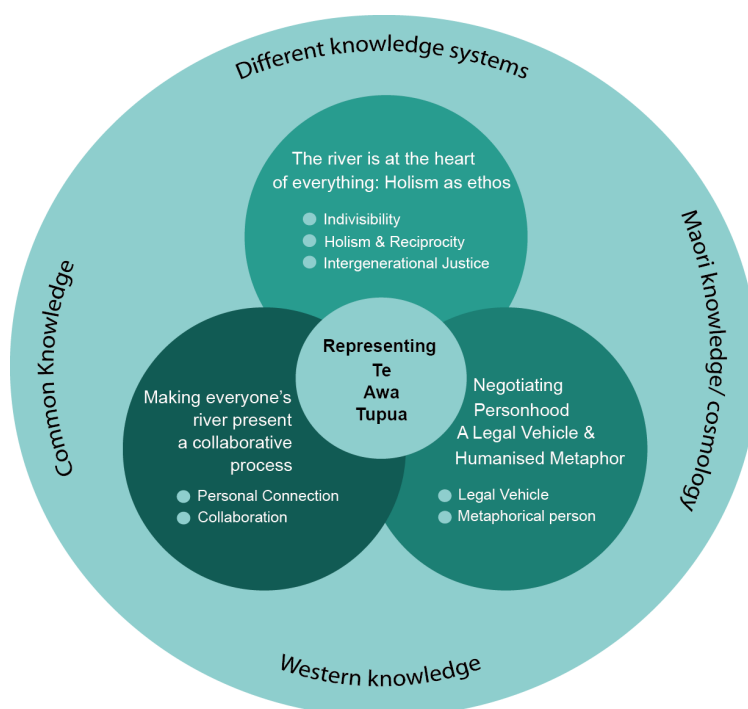
Uppsala, organised by the Swedish Anthropological Association (SANT), and the Finnish Anthropological Society (FAS), which took place in April 2018.

## 5 Results

In the next section we elaborate on our findings in four main themes based on the phenomenological descriptions (exemplified by quotes) of the representative practice of TAT, as brought up during the conducted interviews (see figure 2).

In short, following our interpretative process, we found three main pillars: (1) the holistic character of the river community not only functions as an overarching holistic worldview but is also seen as serving the preferred moral relationship with the river, being practically manifested by a reciprocal relation with the river, whereby (2) the legal character of the case is seen as a vehicle creating standing to maintain the river's health and wellbeing, however a danger is recognised of the general public misinterpreting the 'legal person' concept, and lastly (3) an emphasis is put on the need for collaboration of the representatives in order to unite the multiple voices of the river to get the 'closest representation' possible. As a backbone of the emerged themes, we argue and exemplify as well that the statements and claims recognised within the three themes are influenced by different knowledge systems, which is elaborated on first.

Figure 2. Illustration of the themes distilled from the interviews



## 5.1 Different knowledge systems: between defining and relating

Knowledge is obviously a benchmark to decide what is good for the river (and decide on for example goals for the River Strategy) and to be able to weigh different interests and values when representing the river. The three knowledge systems described are (1) Māori knowledge or in general ‘way of knowing and understanding’ (*mātauranga Māori*) (2) Western knowledge (*mātauranga Pākehā*), and (3) common sense or anyone’s knowledge derived from observations. Furthermore, we do not aim to demarcate specific boundaries of the three knowledge systems and realise they can be fluid in certain interviewees’ descriptions, which fits the holistic character of this case, and arguably offers possibility to “dismantle” a strict knowledge divide (Agrawal 1995) in decision-making.

### 5.1.1 Māori knowledge and cosmology (*mātauranga Māori*)

The referred to Māori knowledge, among other things, includes concepts of their holistic understanding of the world, such as the genealogical connection (*whakapapa*) the iwi have to the river as part of their cosmology, in which the river is considered an ancestor (*tupuna*). To give an example of the importance of these concepts within TAT’s legislation, **Interviewee 6** talks about the earlier defined concept *kaitiakitanga* or “*indigenous guardianship*”, as a sustainable relation or balance between people and their environment.

Apart from Māori interviewees elaborating on their cosmology and the holistic worldview (further explained in section 5.2), non-Māori representative actors respect this relation and the spiritual manifestation: “(...) *I think the Māori story is such a strong one, about how their ancestors in the river talk to them, (...) that is where the spirits are.*”, says **interviewee 7**. However, she does acknowledge her limits of understanding the full meaning of this connection and knowledge regarding consulting the river as an ancestor:

“There are some traditions (...) that I don’t understand exactly what that means, but they know. Those of us who are not (...) probably never gonna be able to understand that, so they just don’t share it with anybody because, in order to sit at it and talk with it, you have to understand a way lot more”

- **Interviewee 7**

This description arguably assumes a more deeply entrenched connection the iwi has with the river. It shows a challenge **interviewee 7**, along with other non-Māori representative actors, to be limited in accessing this connection and traditions, even though it is very respected and a core part of the legislation.

### 5.1.2 Western knowledge (*mātauranga pākehā*)

From another perspective, Western knowledge (*Mātauranga pākehā*) is mainly described in a scientific context, meaning to play a role in assessing the health and wellbeing of the river in its physical, environmental sense such as water quality, providing technical support for the human faces (*Te Pou Tupua*) and the strategy group (*Te Kōpuka*).

**Interviewee 2** admits previous management plans on the river were “very much science-based” reliant on this knowledge: “*We traditionally have a Western way of looking at rivers so it’s (...) a resource management relationship with the river*”. He exemplifies this with explaining what the impacts of agriculture are on water quality, nitrogen levels in the river, water allocation and so forth. He further states that the relation of the Regional Council to the river will “*fundamentally*” change. However, he sees it as an improvement, making it less confined and putting the river at the centre of things, rather than the river as a resource to be used for exploitation.

Nonetheless, techno-scientific knowledge also seeped through when talking about the strategy document; ‘Western science’ will still make up a significant part of decision-making regarding the river. For example, **interviewee 3** deemed it important to have incorporated measures for the strategy to be successful. Others claim it to be essential for the different representative bodies to have a good technical support in order to provide and understand various sources of data about the river. Still, the general tendency of the interviews defines this (arguably) exclusive expert-driven knowledge as rather supportive to the moral core of the legislation when asked how the river’s status is assessed.

Recent contemporary techno-scientific improvements are also applauded for to improve understanding of knowing what the environmental impacts of certain activities on the river are, such as waste management around the river.

On the contrary of this trust in Western scientific knowledge, **interviewee 4** (of Western descent) shows a rather sceptical view on using science for determining the river’s status. He maintains it was not needed in the past before any Europeans arrived, arguing it was only needed to measure environmental impacts that were caused by them anyway.

Overall, Western technoscientific knowledge will, according to the interviewees, play an important role in determining mainly the environmental impacts on TAT. However, to ward against the colonisation of Western knowledge, the legislation attends to (Māori induced) moral standards and representatives to arguably realise the “*imbalance*” science has brought upon the river.

### 5.1.3 *What does the river look like? ‘Common knowledge’*

The third and last knowledge system discussed, although to a lesser extent, is ‘simply’ referred to as common knowledge, or just anyone’s knowledge. Referrals to this kind of knowledge are mostly used in the context of observing the environmental status of the river.

**Interviewee 1** elaborates on the role of this type of knowledge within the river’s management and its relatable character: “(...) *there is also a layer of, what might be tagged as Mātauranga, but is actually just anyone’s, (...) just observational data, like what does the river look like*”. It can arguably be characterised as an inclusive kind of knowledge, as anyone can observe what the river looks like, as long as you are living nearby and experience individually what is going on with the river. This is also referred to as seeing ‘signs’ of the river, such as the clarity of the water and fish stocks. It may be understood as anyone’s empirical observations. Further elaborating on this notion, another interviewee claims how clean water should be a right to anyone, the common sense of what clean water is, is identified as playing a big part in iwi’s role within the framework:

“That are kind of some of the measures that iwi would be looking at in the future, that we can go to this and at the river, take a glass of water and drink it safely and give it to our kids. Ultimately that is what I personally want to see at scale. (...) for some places in New Zealand, and I have (...) taken my kids (...) to swim, we thought was fine. They come out scratching next day, because of what was in the water.”

- **Interviewee 3**

All in all, the interviewees acknowledge the importance of legitimising local, ‘common knowledge’ to determine the health and wellbeing for the river and the surrounding communities within decision-making.



#### 5.1.4 'Would you drop poison on your ancestor?' Clashes & opportunities

Both challenges and opportunities were expressed by the interviewees in relation to juxtaposing the different knowledge systems. On the one hand, combining the different knowledge systems were potentially clashing in the future, but on the other they were thought of to provide bridges of different perspectives. A practical example of such a clash is given by **interviewee 1**, who describes the helicopter drop-off of poison in the area to eradicate exotic pests in and around the river's catchment:

"(...) you know from a technical perspective, scientific perspective you would say it doesn't have any impact on the specific species or the flora and fauna of the river, but again philosophically and culturally it could be considered for many to be very offensive, just drop that on the river."

– **Interviewee 1**

These competing claims show how dropping poison can be legitimised by scientific evidence (only harming the 'aimed for target') whereas speaking from a Māori cosmological perspective, now that the river is a recognised legal person the act is intrinsically unacceptable and disrespectful.

When thinking in genealogical terms and seeing the river as an ancestor (*tupuna*), it is legitimate to think this way. But what if they both fit a different purpose?

Another challenge is given within the context of combining different concepts of how the river is traditionally defined. When asked about this disparity in defining the river, some interviewees predict the legal person concept might clash with established Western concepts of the river when the implementation process starts of. **Interviewee 3** states that there could "*be a real conflict in the Western model of property rights and Te Awa Tupua*", and further explains that with the new legislation "*any take of the water for irrigation, or for hydro-electricity, or anything else will need to be done under this new context and improve (...) the health and wellbeing. On paper you would say it probably doesn't, so leave the water in there.*" However, he claims that they always need to consider what is good for TAT, as a whole, as there is a "*need to balance it out with the health and wellbeing of the communities as well.*"

Furthermore, a certain "pick and match" strategy is spoken of by **interviewee 2** when utilising "certain indigenous knowledge" selectively in other legislations and "*how they cope with values like it's kind of code (...) you can write a set of cultural values down and draw them on a map and what we can take out them, but if you can't, then you forget them.*" Obviously, this tendency is problematic as it implies selective appropriation, but it is less likely to happen if Māori cosmology forms a solid baseline in the new legislation.

At the other side, opportunities for these different kinds of knowledge systems are spoken of. When talking about ways of assessing the health and wellbeing of the river, one of the strategy group members sees her role as having the ability and experience to "*bridge*" the two knowledge systems. Referring to diverse scientific measurements both explicitly (such as sediment) and implicitly (such as E. Coli and nitrogen levels) she concludes that it is doable to combine both knowledge systems:

"All those factors come from a Western science bases, but some of them transfer across to a Māori view of what does a healthy river look like and obviously those are indicators of (...) biological health as well, so what animals can live in it, so you know all those measures you can define in a Western science way and you can relate to it in a Māori science way." -

**Interviewee 1**

Regarding how to listen to the river, the following example explains the dualistic entanglement of different knowledge systems offered by **interviewee 2**: “(...) *there’s two parts there*”. According to him one “*is listening to the river in terms of (...) things you get to see, whether there’s too much sediment in it or see the effects of water pollution or water extraction*”. Secondly, he continues to argue that “*a more fundamental part*” lays in “*Te Pou Tupua [who] have been appointed to speak on behalf of the river and that’s their only singular function in the world. So (...) in terms of listening to the river to understand you should be able to see and understand what is happening to it.*”

As deduced from the previous two statements by **interviewee 1** and **2**, a balance of defining the river and relating to its (legal) status is identified to support the representative process as in (1) defining the health and wellbeing of the river by “*listening*” to it, whether it is by certain measurements or empiric observations and (2) understand “*what is happening to it*” by putting these knowledge claims into the context of seeing the river as a singular enfranchised entity. What the holistic view of the river as an entity encompasses is elaborated on next.

## 5.2 The river at the heart of everything: holism as ethos

As the different knowledges have been set out as a background, we now describe what the interviewees deem important when talking about representing the river within its implementation. All interviewees emphasise the core of *Te Awa Tupua*, meaning the river as “the sum of all its parts”. This is in line with the legislation’s formal content basing its “essence” on the four intrinsic values (*Tupua te Kawa*) (**see appendix 1**). Except of functioning as an overarching worldview, the interviewees describe this holistic character “*at the heart of everything*”, that all representatives have or should internalise and ought to be communicated to the public as well as forming the core of the river strategy. However, this ethos is not always seen as that easy to implement, as other views on the river might throw a spanner in the works when practically manifesting this moral relationship as reciprocal, sustainable action.

### 5.2.1 Indivisibility as a practical challenge

As argued before, the four intrinsic values of the legislation are mainly focused on the holistic view of the river as a whole, and the inalienable connection the iwi have with it. **Interviewee 3** mentioned that the river’s health and wellbeing is “(...) *intertwined with the health and wellbeing of the iwi as well. Because we are so tightly connected to it. So not just culturally and spiritually, but also economic well-being for a long time has been tied to the river.*” It shows how the river is perceived as a natural-cultural construct comprised of both human and natural elements, being a source of physical and spiritual sustenance, seeing the river as an inherent part of their livelihoods. As exemplified in the following quote of **interviewee 6** these values change the way decision-making regarding the river is made:

“you have the notion that the river is indivisible [and] can no longer be approached in its parts and that the indigenous peoples have been defined as a part of this picture as inalienable and have a responsibility towards that river. And of course you have the community, who are all part of this definition of this framework.”

- **Interviewee 6**

However, this relation based on the iwi's dependence and livelihoods is often emphasised, others also refer to a more observational sense in why the holistic view is important.

**Interviewee 7** illustrates an example how the holistic worldview is embedded in observations of the river. "*There are some impressive pictures of (...) the Whanganui river flowing down*" she describes when talking about the siltation of the river. "*[First the river] is green or blue and then there is a picture coming in of a side river that is brown (...) and then it joins [the main stem] and the whole river's brown.*" This 'turning brown' of the river shows that the holistic image of the river catchment is important in empirically and environmentally assessing it. Instead of referring to singular problems, it emphasises how it has an impact on the whole river community.

There is a general positivity among the interviewees concerning working with the holistic picture of the river. Moreover, **interviewee 6** claims this to possibly result in a social "*change of paradigm*". The same interviewee envisions it to give standing to both the Māori relationship with nature, but also respect to the so-called "*laws of nature*". Similarly, **interviewee 7** claims the "*original state*" should be retrieved as well, whereas at the same time mentions new economic opportunities, which would arguably depart from the original state.

All things considered, the economic benefits communities around the river are believed to be inextricably linked with the social, cultural, and environmental aspects of the river's catchment in which the claim is made that if one flourishes, the other will as well. Hereby an abolishment of a hierarchy in social, cultural, environmental, and economic purposes is implied.

Still, even though the river is now legally recognised as a whole, "*previous sorted boundaries*" are in use but are expected to be "*disintegrated*". These boundaries are criticised by **interviewee 6** as a dividing concept as they: "*are cut across rivers and people.*" When talking about the Fish & Game Council, he states that "*(...) at the top of the river the Auckland council is involved, and Auckland [the city] is a long way from here!*". The pre-distinguished regions, and the segmentation of the river is shown by **interviewee 5**, pointing to the boundaries of fishing and hunting regions on a map at the beginning of the interview. However, he does emphasise and supports the "*(...) greater good of the river, the whole package being the environment, being the economic sustainability of the communities and the cultural aspects*".

Another prevalent criticism often appears when mentioning a hydroelectric company. It is described how the power scheme that uses the Whanganui river not only caused environmental degradation over the years, but also spiritually affected the river's power (*mana*) by diverting its natural flow and taking in water. This upset the iwi living around the river, and as a result the dynamics between them and the hydroelectric company is described as troublesome in the past, but now they "*seem to have a reasonable relationship*" according to the **interviewee 7**. It can be argued the ontological views both parties have been disparate (the river as an exploitable, compartmentalisable resource versus a holistic ancestor) but it is mentioned that the iwi have been "*generous*" by including the hydroelectric company in the strategy group, moreover showing interest in how this dynamic will play out.

All in all, actors involved in the legislation refer to the river differently, as well as that it might clash with previous established structures (such as the mentioned boundaries). It raises questions 'whose river' is legitimate to be represented. Despite the general enthusiasm and support, some of the interviewees agree that there is not a lot of guidance in the legislation in what the preferred relation based on the four intrinsic values practically entail, and how it interferes with other ways of recognising the river as an object of ownership for example. The following sub theme illustrates how the holistic character of

the river can be practically manifested and arguably clarifies how the differences could be 'balanced'.

### 5.2.2 *Don't talk about the river, talk to it: Manifesting holism with reciprocity*

As seen in **Chapter 2**, reciprocity is described as an important moral baseline recognising nature's agency. The legislation's emphasis on the river as a holistic entity is believed by the interviewees to provide and promote a more respectful relation providing a balanced health and wellbeing, countering the ontological view where "*the river [is] being seen as an expendable resource that you basically use for your own benefit but don't give back to.*". This practical relation is exemplified by the **interviewee 6**, in which he refers to how, as a little boy, he received the privilege to perform a prayer (*karakia*) at the river but was held back by his elders. The following passage explains how his euphoric feeling stalled:

"I thought I was the centre of the universe, because I was asked to do the prayer as a young man and I went to the river and they took the wind out of my sails and they were quite correct, cause they came (...) and said to me "Son, where's your contribution to the river?" (...): you thought about what you meant to take from the river and it wasn't fundamentally and primarily about what you were giving back to the river." - **interviewee 6**

Having this memory in mind, he follows to mention how he wants, now TAT's legal personality is established, to elevate this philosophy and urge people and industries to think what their impacts are when performing actions in or near the river, whether it is a private farmer, or a hydroelectric power company. **Interviewee 6** presents the example of how an agricultural company requested a waiver from the iwi, insinuating questionable, environmentally degrading plans. He further criticises it was done without any thought on what the impacts would be to the river nor consulting the iwi before. He describes the "giving back" part as always having in mind what an action will mean to the river and try to consult the community before: "*giving back to the river is all about that, talking to the community, (...) what can I do to create the best outcome for the environment, even it means my profits [are] gonna be less. (...) So that is one way to give back and is actually to talk to the river*".

He continues this "*talking to the river*" has been a "*salient maxim*" for the iwi around the river for generations, being "*instructional*" on how to treat and respect it. However, arguably this could be applied to anyone involved in the river or being part of the legally established community. Herein, reciprocity can be recognised as a 'best practice' to endorse the holistic, legal framework as a balancing act between nature and humans, which are claimed to be part of the same community. Although, **interviewee 6** mentions that this "*whole ethos*" is primarily indigenous, he claims it does not mean it cannot be shared with the rest of "*the river community*". For example, **interviewee 2** states that it should be part of the learning process to "*talk with the river*" and decide proper actions upon it.

### 5.2.3 *Intergenerational justice coupled with solidarity*

The process up to the new legislation is often described as "*a long one*". The need for a reciprocal, holistic way of managing the river has an intergenerational dimension, as the descriptions provide justice to (1) past generations that have fought for the river for around 150 years, but also (2) preserving a healthy river for present and future generations. For example, **interviewee 3** states "*(...) as a birth right, you want your kids to be able to (and my grandkids) to swim in the river. And ideally be able to drink that water, (...)*". However, when the **interviewee 1** talks about how the "rights of nature philosophy" can be spread, she answers: "*if we prioritise it in our decision-making and stop thinking of it as an asset for our youth and instead thinking of it as something that is fundamental, that we respect and love and have to take care of*" the outcomes can be even greater. She recognises the

same stance of responsibility for future generations as the interviewee quoted before but adds the intrinsic value of healthy waterways (and arguably nature on its own) on top, which we should show solidarity with, to reach the aimed for change.

### 5.3 Negotiating personhood: a legal vehicle & humanised metaphor

In the following section, we elaborate on how the interviewees argue that the instrumental, legal aspect of this case brings both opportunities and challenges for improving the river's status, as its official character obviously provides standing but also fosters (metaphorical) misconceptions regarding its legal status in the public sphere.

The interviewees often talk about legal personhood as a tool or vehicle to incorporate Māori cosmology into a Western law framework, quite in line with how the phenomenon is defined in academia and gives standing to Māori relationships with water (Morris & Ruru 2010; Iorns Magallanes 2015). Moral values and explicitly the four intrinsic values are not only the essence of the legislation, but also the relation that iwi have with the river or nature in general. As seen before, the concept of legal personhood should change the way people treat the river and give justice to both the Māori and the river. The vehicle itself is described by **interviewee 8** as “*nothing new under the sun: companies are artificial persons, trusts are, and corporate societies the same. So, it's to try and use that kind of tool to treat the river in that particular way and then justice*” arises. **Interviewee 6** sees it as the closest manner to embody Māori values into Western law, changing people's perspective of the river and achieving the aforementioned “*paradigm shift*”. This should bring about a collectiveway of thinking about the health and wellbeing and its long-term impacts<sup>12</sup>:

“[the] legal person is the vehicle, so when we first thought about changing the dynamic and changing the paradigm through the river is viewed, we thought about those values (...) the very essence of our relation with nature, the laws of nature. So, we thought about those first and then thought [about] the vehicle required to carry it in a legal sense and of course the one of legal personality was the one that we used. (...) it is the closest approximation to, in that (...) Western legal sense.”

- **interviewee 6**

Clearly the Western construct of legal personality was picked to consolidate with the (Māori) holistic view instead of the other way around. Secondly, most interviewees refer to (environmental) wrong-doings which impacted the river and the (iwi) community in cases in which it did not have a voice. The legislation is seen by **interviewee 3** as giving this voice or rather of recognising the pre-existing voice: “*for iwi it was already there anyway, we always treat it as a person, so just giving it a voice in law (...), a Western sense of law*”. Recognising the voice of the river gives it standing and through guardians it can potentially go to court. Nevertheless, there is a general tendency of interviewees rather avoiding this ‘escalation’ of misunderstandings going to court. A possible explanation of such a legal challenge of this is given by interviewee **6**, claiming that the legal system is not quite up to par yet with the holistic, moral framework TAT legislation consists of, as he argues it still uses the limited “*natural resource jurisprudence*” discourse.

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<sup>12</sup> In general, there is a sense of sustainability as the legislation is implemented by local actors which are appointed for long-term periods. It is framed against (previous) Crown ownership, which managed the river in cycles based on short-term elected governments.

### 5.3.1 “Will the river have a visa card?” Metaphorical strengths and weaknesses

The linguistic strengths or connotations of the term legal person are dubiously referred to. Even though in the strict, legal sense of the word a legal person is not to be confused with a human person considering its rights, responsibilities, and duties. However, this confusion is often made and the humanised aspect of how a natural phenomenon was declared a person has appealed the public’s imagination.

This notion causes some frustrations as seen in some interviewees’ responses. The following example of **interviewee 8** shows how people exaggerate the implications of legal personhood and ‘overhumanise’ or misunderstand the terminology: “*I have had a number of dimwits saying to me: “Will the river have a visa card?” What if the river overflows, can you sue it ‘cause it has been a naughty boy?’ you know this kind of stupid stuff.”* Similarly, **interviewee 7** doubts the validity of a statement of a tourism organisation regarding the river: “*It said something about, yeah now that the river is a person... And I am like no it is not a person, it is a river!*”

On the other hand, the interviewees do take metaphorical, humanised aspects of the river to exemplify and legitimise the holistic approach to be suitable for the river’s management. When talking about the implications of seeing the river both as a resource to use and a legal person with rights, **interviewee 2** says bringing those together will be a challenge, for example in the context of water abstraction. He illustrates the entire river as a body and claims “*it’s kinda like putting a needle in*” deciding upon “*how much blood are we gonna take? (...) before the river’s sick and can’t give any more blood.*” Similarly, another metaphor by **interviewee 6** explains the indivisible nature of TAT. The processes of desegmentation of the river is compared to an incomplete human body as in “*that you must treat it as a whole*” as “*it is impossible to deal with a dismembered, desecrated corpus. You know: what you and I can do without an arm or a leg?*”

Another human comparison given by the same interviewee, is that of the river as an orphaned child, exposed to multiple governmental agencies. It is explained this child is not managed separately by these institutions, but in collaborative manner, which criticises the compartmentalising way modern governments work.

In this way, anthropomorphising the river works in both a mocking capacity as well as galvanising support for its conservation.

## 5.4 Making ‘everyone’s’ river present: a collaborative process

In this section we describe the collaborative, inclusive approach which is described as important in the legislation’s implementation. The deliberative process is identified to be vital, in which a multiplicity of voices can be brought to the fore. Most of the interviewees talked about the collaboration within the strategy group (*Te Kōpuka*). Furthermore, a certain personal connection is expected from all representatives to know what is best for the river and understand other’s opinions.

### 5.4.1 *Being of the river: a personal connection*

Most of the interviewees value a personal connection with the river within the representative framework of the TAT’s legislation. This connection is explained in multiple ways, varying from a deeply entrenched spiritual and genealogical connection, originating from Māori cosmology, on to a more direct relation to the river by living next to it and/or working along it.

In general, there is a tendency for the representatives to claim that, to represent TAT well, the person needs to have a certain connection to the river. As the co-appointee of the

official human faces phrases being “of the river” offers a certain experience and connection, making the role of representative more legitimised by being directly involved.

This connection is often emphasised in spiritual terms, such as the Māori *whakapapa*, based on genealogical ties between the people and the river as an ancestor. The term, however, is not strictly bound to the interviewees of Māori descent: **interviewee 1** emphasises her own personal connection when talking about river representatives’ qualities: “*so I am not Māori, so I don’t have an explicit whakapapa to the river, but I have chosen to create my own one*”. Similar to the previously explained “paradigm shift”, **interviewee 6** agrees that it is not solely about *whakapapa* in its original sense, and rather sees the settlement and its implementation as a way of how people position themselves towards nature. “*(...)there is already an emotional attachment to the river. (...) those values are not restricted to the indigenous people and it’s something all people could see and share within our own watershed, within our own river’s context*”.

However, **interviewee 6** also claims that the personal relation with the river, of his generation and that of Māori children, has become less important, explaining that there seems to be a “*loss of the physical connection as our primary relationship with the river*”. Throughout past generations the spiritual connection to the river has been undervalued, by for example seeing the river more as “*an expendable resource*”. He also describes more recent development plans are established to get Māori children out of poverty which are mainly focused on the economical aspect and arguably still undermining this spiritual connection. The new legislation should bring back this connection, being embedded for example in educational systems rather than solely a technoscientific view of the river as right now “*the curriculums actually cater for this particular view of the river. To align with the indigenous view, it necessarily must be supported by a change in the way we teach.*” Afterwards **interviewee 6** continues that enhancing this personal connection is considered vital for (future) representatives and decision-makers to take the river in its totality as a starting point, rather than people using it for certain purposes.

However, the way to make sense of the complex holistic vision of TAT and combine the claims of knowing what is good for the river’s totality, is recognised within the practice of collaboration, which will be discussed now.

#### 5.4.2 *Taking your hat off: collaboration starting from the river*

Collaboration is seen by the interviewees as a core element of the representation process and the implementation of the legislation. While not including the human faces of the river in court, the goal of the strategy group is to establish what the health and wellbeing of the river encompasses and how it is guaranteed by setting out a long-term strategy.

**Interviewee 2** claims that this process facilitates conversation, which holds the representatives of TAT accountable to the river as a whole: “*When you need to have a conversation about how you might try to address those issues then there’s the power to speak on behalf of the river itself.*”

The deliberative nature of the strategy group (*Te Kōpuka*) is seen both as an essential opportunity and a challenge of bringing the ‘different voices of the river’ together, which is related to the different kinds of knowledge systems discussed before. Practically the representatives of the strategy group need to feed in all sorts of information and figure out how different laws and bylaws affecting the new legislation will work together. However, **interviewee 2** raises the importance to “*(...)actually leave your preconceptions and personal stuff behind and work out that you’re there for the good of the river.*” showing that taking in *a priori* interests to negotiate is not the goal of the strategy group. Rather, the stakeholders must take their “*hats off*” when entering the room to respect the whole health and wellbeing of the river, rather than their sectors’ interest.

For being able to take the river community, as a “*sum total*” of all its different parts, as a starting point, it is also argued it is needed to represent the river in this multiplicity, rather than a human-based 50/50 (two party) co-governance model as seen in other mentioned settlements between Māori and the Crown. Still, the interviewees also mention it the challenge to bring together all the different voices together in decision-making. This is exemplified in sayings such as there is an easy chance to “*information overload*” because of the 17 members, and mocking jokes on how this will be a challenge for the moderator. Paradoxically, some people argued being in the strategy group for their sectors interests, whereas others were rather chosen for practicalities or a presence-based connection as described before.

## 5.5 Summary of results

To summarise, the interviewees’ descriptions of the phenomenon of ‘representing a legally personified river’ shows an enthusiasm and a preliminary trust in the new legislative set-up of the river’s status. However, this so-called vehicle calls to one’s imagination, both with a mocking capacity as well as galvanising support enhancing a holistic human-nature relation based on reciprocity. The representatives also emphasise the assessments that need to be done to know how TAT’s health and wellbeing can be maintained, whether this is done scientifically, spiritually or combining it into an epistemological ‘middle road’. However, challenges were recognised in reconciling different ontological worldviews of different representative actors in the strategy group, even though the interviewees found it to be rather generous to include actors with differing worldviews (e.g. the hydroelectric company). Representative criteria were identified within the emphasis of representatives being ‘of the river’; having a personal connection with it.

In the next section, we continue to analyse what these statements mean in the context of the literature of (political) representation and abstract the relations uttered in these claims to place it into a more ecocentric praxis based on expanding what we define as communication. This notion facilitates moral affinity with the extended view of nature, including humans and non-humans.



## 6 Analysis

In this analysis we elaborate on our observations and extend our findings with political representation theory, exploring both challenges and opportunities. We argue that different epistemic and ontological assessments, maintaining a communicative character, are backed up by a moral holistic relation. These form preconditions for the representative practice based on collaboration. These steps indicate that both assessing the river's health and wellbeing as well as acknowledging a certain moral attitude of what TAT is comprised of, are both important to take along in the deliberative strategy-making process. To conclude, we offer a visualisation of a representative cycle including the processes described by the interviewees and abstracted by theoretical concepts. Moreover, we keep in mind the development of the global rights of nature movement throughout this discussion, and we offer some food for thought on the implications in the chapters hereafter.

### 6.1 Between classical and relational representation

As seen in the theoretical framework (**Chapter 4**), Saward (2006, 2009) defines representation as the dynamic, performative relation between the representative and the (what she/he claims to be) represented, rather than the mere definition of formal representative categories. Tanasescu (2016), within his discussion of this “relational view” being embedded within the rights of nature movement, elevates this view by analysing what the components and implications of these relations are. The author says both ethics and knowledge statements are part of the representative claim, instead of one part being more important than the other when analysing the structure of the representative relation (ibid.). Rather, the sutured connection of the representative is the structure of representation, both defining oneself as being part of a generalised us (the representatives of the river) which has a relation to the generalised ‘Other’ (the river). This river however is generalised by claiming a ‘certain semblance of unity’ within a claim, so the personal connection (for one a source of spiritual contemplation, for someone else a recreational resource) one may have with the river and the experiences with it forms a fusion of the representative with the represented (the river). The representatives unify themselves with the river, exposing the sutured relation in the interviews, which is most prevalent within the *whakapapa* concept. It tells us who the representatives are as humans and how they treat the river, as well as it tells us how they are relationary bound to the aggregated river.

Thus, we recognise Tanasescu's (2016) normative relational aspect of representation. However, given the study's phenomenological approach, we illustrate that the representatives do emphasise the importance of assessing and internalising the river's interests to decide upon decision-making, being closer to the descriptions of formal, or normative conditions of representation (Pitkin 1967, Williams 1998, Eckersley 1999, O'Neill 2001). It could be argued that in order to represent TAT in for example a deliberative strategy making process, the claims of the representatives both raise the importance of understanding the river as the holistic sum total of all its physical and

metaphysical elements (“I am the river, the river is me”), as well as how to assess its health and wellbeing (and the multiple ways of getting to that knowledge).

## 6.2 A pre-political communicative relation

As the assessments and definitions of what the river comprises are emphasised, we elaborate here on what the implications are of different knowledge systems identified. It can be argued that the ways the interviewees generate knowledge of the river in order to represent are epistemic claims. However, the ways the representatives define the river, as seen in the holistic theme, are more ontological. What is the dynamic here? We claim that the intersection of both epistemic and ontological claims frames the way of assessing the river, and are presumably forms of communication.

It can be argued the identified holistic worldview and the belief it is possible to talk with the river, rather than about it, asserts a certain relation. It results in a very tight connection between the representative and represented. However, Tanasescu (2016) demonstrates that “talking with nature” does not always indicate a “matter of representation strictly speaking, but of translation, or rather allowing nature itself to speak through the human voice that is itself part of it” (p. 112). Whether or not “talking to the river” is an act of translation or representation, we would argue in this case it still establishes a relation that is important in shaping the legal person and managing decisions making processes upon it, as the representatives identify themselves with the river and ‘summon into being’ the relation they have with it within their claims. Thus, we state this process forms the pre-political practice which ‘prepares’ the representatives taking the river into deliberation.

Salmond’s (2014) concerted approach to water management in Aotearoa/New Zealand describes the Whanganui case as an example, weaving together different ontologies of what nature is and how it is related to humans: the emphasis lies on how nature (or the river) is defined. O’Neill (2001) on the other hand raises the importance of epistemic claims in the representative process, which forms legitimate factors to represent a constituency. It is the knowledge and attitude based on solidarity which lead to the interests of the river that would feed into the representative claims: “Given the necessary absence of authorisation, accountability, and presence, claims to speak on behalf of nonhumans and future generations relies on epistemic claims, coupled with care” (O’Neill 2001, p. 483). Examples of these claims are the uttered statements to assess water quality empirically or scientifically and the spiritual descriptions of sitting at the river to listen. However, does this really imply an absence of all other categories?

As seen in the theoretical framework (**Chapter 3**) the claim of the river being completely voiceless does not hold up here, considering the emphasis of the river being comprised of human and non-human parts as well as the “salient maxim” of the legislation to “*go to it and talk to her*” instead of “*merely talk about the river*”. Although, this ‘talking to the river’ is primarily embedded within Māori knowledge (*mātauranga Māori*), this conviction in the river’s voice can also be partly interpreted by Dryzek’s (1990) concept of ‘communicative ecological ethic’, as his emphasis on the local, non-generalised communication with the natural world fits here, given his emphasis on human perceptions of nature’s (communicative) feedback. This normative concept can be interpreted in the case as the emphasised ‘middle road’ or common knowledge. The latter form of knowledge is something that arguably all representatives can access, such as observations or visible water quality. However, Dryzek’s theory of communicative ecological ethic implies a human-nature divide and cannot be simply seen as the solution, because the river is not only understood in its natural ecological way. Moreover, Dryzek criticises both Western rationalism and (ecocentric) spirituality to be totalitarian in their respective understandings of nature but, as earlier discussed (**3.2.2**), the importance of the holistic approach forms the

moral baseline for the legislation, ‘interweaving’ both indigenous cosmology and Western rationality. On another note, the author explicitly favours a local approach when operationalising the ‘communicative ethic’ to make good ecological decisions, bearing in mind the communicative epistemology of nature as a rational principle in order not to “suppress local ecological signals” (a.a., pp. 208-210). In the case of Whanganui, these signals are obliged to be ‘picked up’ again by representatives listening to it. The emphasis however, in Dryzek’s words, is not on the kinds of knowledge systems used. He rather proposes a “holistic experimentation”, in which “any particular interaction of human and natural systems in terms of a complex, nonreducible, and unique entity” (p. 209) would be favoured to lead to an improved perception of our environment not to be ignored. This ‘improved perception’ can be linked with what Von Essen & Allen (2017) demarcate, in the context of internatural communication, as a pre-political relation with non-humans as a precursor of the political representation practice by proxy-representatives in the deliberative arena. This can be recognised in the case as well, as the (geographical and spiritual) emphasis on the relationship representatives have with the river acts as a baseline to represent them afterwards.

Despite this local-communicative emphasis, a shift away from the importance of representation focused on the representatives and constituencies being linked in territorial or geographic terms, can be identified in political theory (Rehfeld 2005). This notion arguably sabotages this direct ‘communicative ethic’, as seen in for example ENGO’s making claims on behalf of nature worldwide or in a distant place. On the contrary, as seen in the interviewees’ emphasis on “*being of the river*”, geographical personal relations are thought of as a legitimate precondition to represent the river’s health and wellbeing. In Williams’ (1998) explanation of voice, deliberative processes should rely on the presence of representatives that have access to perspectives of those being marginalised. If access here counts as being of the river, living with the river and knowing about its perspectives and interests, does that not count as authorisation as well? If we accept that this is indeed a form of authorisation, it will take place in the pre-political practice of assessing TAT by being in its proximity, or to a greater degree being part of it identity-wise. This authorisation would then constantly be held up by reciprocity, whenever decisions are made, representatives would presumably pick up nature’s signals again to assess and reflect upon it individually before taking it into deliberation.

The interviewees state that the process of formulating the health and wellbeing is open to interpretation as far as the strategy document is being developed. This results in the representatives having different preliminary meanings of what it encompasses, leaving the pragmatic content of the intrinsic rights of the TAT open to discussion. But even if the content of these rights is rather open for discussion, does this mean there is no moral obligation whatsoever?

### 6.3 Restoring relations of moral debt

One central question in society is whether moral duties precede legal rights and laws, or if law is that which generates moral duty. This is central to the river’s representation inasmuch as attribution of legal personhood. The latter is either done on the rationale that it induces a moral obligation toward its protection that has heretofore been missing, or that legal personhood is a mere formality assigned to an entity that we already have moral duties toward. In short, which is the chicken, and which is the egg: laws or moral duties?

For this paradox we return to Tanasescu (2016), as he states that an ethical relation recognised within rights of nature representation processes is based on a sense of moral debt (p. 62). It can further be argued that therefore we make the aforementioned epistemic claims based on care (O’Neill 2001) and act out of solidarity within justice claims (Von

Essen & Allen 2017) towards nature and non-humans, to address this relation to restore the “ecological balance” narrative. However, these claims are rather a wish how nature should be, making “the moral dimension of our relation to nature central” (Tanasescu 2016, p. 119) rather than showing what it is. The representative moral-claims are often framed as solutions to give (universal) justice to what Western society has done to nature and indigenous communities, which are now being translated into legal claims. The aforementioned subtheme of intergenerational solidarity (5.2.3) can arguably be analysed using the concepts of moral debt or guilt. Within this sub theme, three layers of guilt can be identified within the interviewees’ utterances: (1) a guilt for the river’s ‘imbalance’ (pollution, water intake, pests threatening native wildlife and so forth), and disrespecting its power (*mana*), (2) a moral debt towards suppressing Māori and Māori worldviews and a duty to give justice to the people who have fought for the legislation and (3) a guilt for future generations not being able to enjoy a ‘healthy’ river.

Tanasescu claims this fatalistic moral debt narrative is at the core of non-human rights claims (2016, p. 62), although defines it as problematic as it paralyzes humanity’s agency to take responsibility (p. 157). However, the layers of guilt are not perhaps debilitating in the Whanganui case, as they are mitigated with the recognition of the communicative ethic as described before: the river is now legally speaking and not considered voiceless anymore. The guilt is still there, but rather functions as a catalyst for change instead of causing immobilisation. This empowerment can be illustrated by interpreting this relation of moral debt with the help of Williams’ (1998) concept of memory within the representative claim: sharing a historical burden of oppression and discrimination. One could expect that the marginalised status of both the Māori and the river, including their spiritual interconnectedness, would give Māori more legitimacy in representing TAT sharing this burden. Nonetheless, the author continues that act of the representational claim should be based on equality and a shared responsibility to mitigate this moral debt:

“The relationship among social groups is not one of moral inferiority or superiority; it is not disclosed by comparisons of relative guilt for a history of disadvantage, nor is it measured by the relative strength of group members’ work ethic. Rather, implicit in a group-based view of political equality and fair representation is the premise that just social cooperation must be ever vigilant” (a.a., p. 102).

This argument can be recognised within the fact that the ‘tables have not completely turned’ as a colonial compensation: the inclusive approach of TAT’s legislative implementation and the interviewees’ emphasis on it being a genuine gesture from the iwi resulted in (even) including actors that in the past have insulted or not recognised their ontological views, for example the hydroelectric power company. Again, this further illustrates the implication of moral debt is not that paralysing but engendering in this case. Even though Tanasescu (2016) talks about formal texts, he claims:

“the fact that nature is a person in law does not by itself imply moral personality, or moral treatment. When the advocates of nature speak as if moral and legal personality are natural allies, they are not making a statement of fact which could easily be disproved, but rather weaving a representative story that exploits the relational nature of representation and the moral debt inscribed in the concept of rights” (a.a., p. 138).

This process could be identified in for example the metaphorical comparisons of the river to a human body used to exemplify the intended relation based on intrinsic values of TAT. The naturalising aspects of seeing the river as a holistic human body, following this theory, automatically assumes a forgotten, ancestral link with nature as a subject, which due to modernity became an object (ibid.). In the Whanganui case the economic *rationale* objectified the river as a productive resource in the past, serving the common good (Sunde 2008). Statements within rights of nature claim this relationship to be abolished but it does not mean nature solely becomes a subject, as humans inevitably “use” the landscape (Tanasescu 2006, p.139). This dilemma is emphasised within the interviewees’ claims

when talking about the river as a resource or subject, using moral and resource-oriented descriptions interchangeably.

## 6.4 Limits of giving rights

So far, all these descriptions could hold up in representing nature in general, however what is the role of rights here morally speaking? The interviewees generally state that the people's connection with the river (in some sort) has always been there, but are still questioning how, now the legislation has passed, this will be improved.

Similar to Tanasescu's (2016) claims, rights of nature as purely a legal construct is limited in affecting the desired societal change in how we relate and/ or view nature within TAT case. What is legally obliged does not always directly translate into moral norms. The author also poses the example of women having the same legal rights as men, but in reality, do not have the same moral rights as in certain cases they are still marginalised (a.a. pp. 165 -166). However, the interviewees generally describe the legal personhood of the river as a tool or vehicle to bring about a paradigm shift in how we relate to nature, not seeing it as solely a resource but as something that should be respected, loved and/or preserved for next generations. These claims not only describe Tanasescu's (and Seward's) focus of representation as the relation a representative has with what is represented (both internally as inter-subjectively), it as well shows the necessary moral continuation of the legal proclamation in law, which is not enough to establish this paradigm shift, or humanity's "improved relationship" with nature. The author also criticises that rights pre-establish or cement these moral relationships, by obliging people to think about them in a certain way. Although the collaborative approach of strategy-making includes actors that do not 'fit' the moral objective (e.g. the hydroelectric company), you could argue that this legal bindingness has resulted in some people thinking rather cynically about the legislation, seeing it as giving more power to Māori<sup>13</sup>, as well as ascribing 'illogical and irrelevant' human characteristics to it (think of the credit card example in 5.3.1). However, the author states to achieve moral inclusion "we tell stories, we build narratives, we symbolically chastise and praise" (Tanasescu 2016, p. 166); something the iwi and hapū have done for years regarding the river, upholding, and maintaining a (representative) connection some other people might have lost. This connection is to be spread by for example the mentioned educational programs TAT's legislation and funds can establish. It is the question however how opponents of the legislation, calling it "an extra layer of bureaucracy" or "a strategy for Māori getting more of a say over the water", will be convinced. They might see the construct as threatening, seeing the moral obligation as negative, imposing a worldview they do not identify with. In this sense, the legislation may hinder rather than help nature conservation advocacy. To be sure, this remains a largely an empirical question to be determined in the future.

Overall, it seems to be a matter of communication and awareness to spread the moral relation (with nature), and time will tell whether this enthusiasm embedded within a paradigm change will succeed or not, for which the legal framework set a first step to give the relationship standing.

TAT's legislative act does enable the river to potentially sue anyone through its human faces (for example when the river as a whole is affected against its interest). However, the described emphasis of the act is rather on facilitating a different relation with the river by including multiple voices in the strategy group. Together they form a strategy to enhance and maintain the health and wellbeing of TAT, mediated by TPT to give it standing both in court, decision-making processes and other (informal) settings. It shows how the

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<sup>13</sup> This informal statement was given during our fieldwork by someone not related to and not quite familiar with the legislation, as opposed to the representatives being predominantly positive about it.

representative practice also here exceeds formal arrangements (Saward 2009). The river community of TAT is seen as ‘pluralistic being’ made up of different human and non-human parts, however the “legal personhood” construct (as it is an individual) is needed to fit the liberal, individualist system New Zealand law structure still maintains, to fit in and give some sort of standing.

## 6.5 Sharing internalised interests

The previously identified concept of presence becomes difficult when speaking of nature representation as representing those who cannot speak for themselves (Eckersley 1999, O’Neill 2001). Criticising Habermas’s ideal communicative community where all members are present and able to represent themselves, Eckersley (1999) argues that not all of those who are affected (e.g. non-humans) by decision-making processes are able to be present nor represent themselves in dialogue. Instead, it requires “role playing” (a.a., p. 26), where the representatives internalise or at least consider the interest of those who are not or cannot be present (Goodin 1996), as seen in the description of the pre-political stage.

Goodin (1996) argues that instead of having every person or being representing their own interests, it is more empirically realistic, as well as morally and politically preferable to internalise the interests of others (including humans and non-humans): “Incorporating the interests of others within our own might not be such a bad thing, at least in so far as the alternative is that those interests would otherwise simply be ignored (ibid. p. 844)”. This internalisation of interests could be a precondition for reciprocity. However, explaining Young’s (1998) criticism on symmetrical reciprocity, La Caze (2008) states that it entails “merely a projection of the self’s perspective onto that of the other” (p. 118), as this is only a projection of your own perspective onto that of someone else, which could be harmful when these projections are embedded in oppression-based ideologies and stereotypes. Think of the river in its former colonial set-up in which it was fully under Crown ownership, without Māori having a say over it whatsoever or “*the Whiteys on the hill*” (the urban conservative upper class) defining the Whanganui river valley as an objectified Other or “*wild terrain*”. Now representation, while well-meaning, might recolonise subjects by freezing them as objects in knowledge production and assigning them new representations (Mohanty 2003).

Instead Young (1998 see La Caze 2008) introduces the concept of asymmetrical reciprocity as a relation based on the phenomenological description of dialogue and the act of giving, where there is more of an attempt to understand the other across differences and where perspective taking is based on asking questions. In the case of TAT this reciprocal relation is merely based on giving back after taking from the river, enhancing the community again.

It can be argued that the personal connection as mentioned before brings the representatives epistemologically closer in being able to internalise the river’s interests and make them present again (Pitkin 1967) in the deliberative arena. By thinking about the health and wellbeing strategy for example, also their own interests are deemed relevant as they are (legally and morally) considered to be bound to the river. Still, Williams (1998) argues for a political equality, in which marginalised groups must represent themselves because otherwise their interests cannot be genuinely represented. This notion offers a dialectic dimension within this case, in which the river is embedded in both the individual representing and other parts of this identity not being able to be present at the moment (the non-human parts and future generations of *Te Awa Tupua* for example).

However, this politics of presence relates to another difficulty, as there are numberless differences in identity and interests within the distinctive (marginalised) group (Eckersley 1999, O’Neill 2001). This multiplicity of interests leads to the claim that “no-one can speak of a ‘unified subject position’ (Eckersley 1999, p. 30)”. TAT is seen in law as one unified

legal person but is comprised of multiple components and therefore needed to facilitate an assemblage of voices. By the means of collaboration, distorted communication may be partly eschewed by the presence of the different actors, representing the interests of the affected community, engaging in dialogue, and checking each other's claims in a transparent process. This however, does not exclude "strategic bargaining" (Eckersley 1999, p. 33) from taking place among these different actors, and they may not always be able to reach to consensus on the river's health and wellbeing. Nonetheless, consensus or compromises that are reached are legitimate if the interests of the marginalised are heard and represented by plural voices (ibid.). However, within the strategy group the different actors pose the difficulty for bringing all interests together, which might cause in not reaching consensus. Still, by the collaborative approach, the actors want to mitigate the chances of issues escalating to court.

Furthermore, Tanasescu (2016, pp. 120-124) argues if the task of representing is to be legitimate, it must be inclusive and based on negotiation (rather than just embedding pre-defined relations in law). He states that the representation process of TAT is given a deliberative meaning as it is comprised of two equal guardians (later redefined as human faces) in a constant negotiation and deliberation with all affected and interested parties. This inclusiveness of the framework is identified by the interviewees in the human faces (TPT) for example listening and gathering information of all communities that fall under TAT's legal personality, and the support and interconnectedness of all different representative bodies.

As previously mentioned, everyone has different epistemological and ontological experiences and assessments of the river. The representatives within the strategy group (*Te Kōpuka*), are "present" not only as themselves but also by internalising the interests of their sector and the holistic worldview. With TAT comprising humans and non-humans, the internalisation of interests brings about another problem that Donoso (2017) calls the "over-demandingness objection". He states that it is unreasonable to demand from representatives to act under every condition in favour of the interest of non-human beings (which can be against the needs and interests of humans), since they are themselves human and thus they are naturally and legitimately biased to serve their own interests as well. However, this notion clashes with the holistic view of TAT, in which the people and the river are interconnected. Within the deliberative processes of TAT's representation, people will have to justify themselves to others (Goodin 1996): "The more others there are who have to be given an explanation, the more likely it is that there will be someone among them who internalizes the interests of nature" (p. 845). This could be achieved by aiming for an enlarged discursive diversity (Carbaugh 2007), including different kinds of knowledge and experiences, which could help us rethinking the modern human-nature divide as exemplified in this case. We could conclude that TAT representatives are well on their way, although the challenge is still how to reconcile all the different voices making up the river in its totality.

## 6.6 The representative cycle

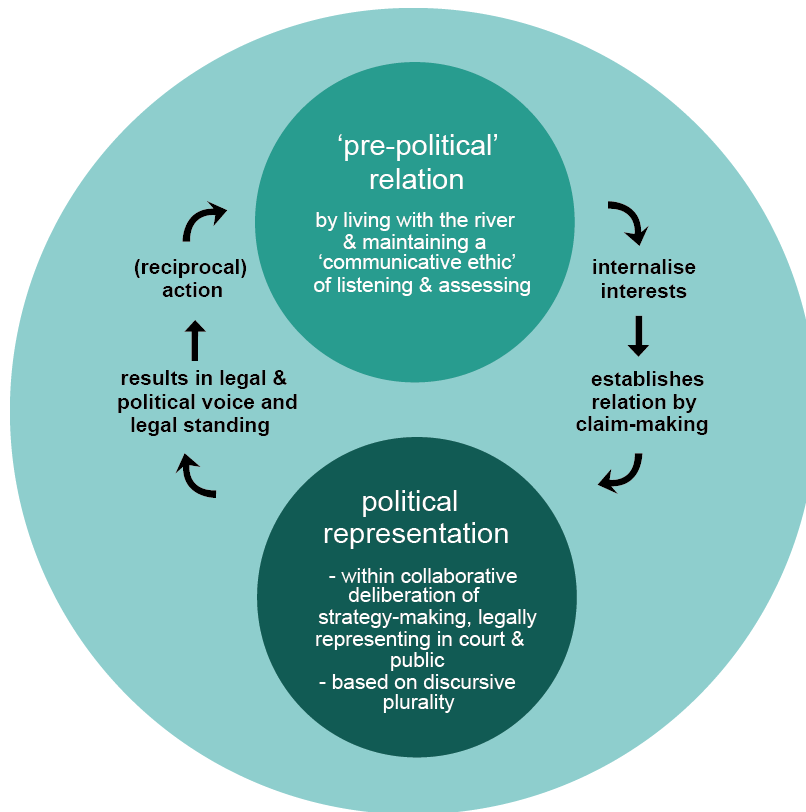
A representative practice can be distilled from the preliminary descriptions of the interviewees as seen in the thematic analysis of the data in the results (**chapter 5**) being abstracted by the applied political representation theory. It bridges the communicative, pre-political relation with the political process of representing the river.

The cycle (**figure 3**) consists of the (1) an *a priori* communicative assessment of the river as a pre-political process based on the described personal connection with the river by living with it. We draw this upon the emphasis of the interviewees to "listen" when being in presence of it, rather than just observing it for strategic reasons. This 'communicative

ethic’, as theorised by Dryzek (1990), forms a baseline to internalise interests of the river community and form claims which establish a certain relation (Tanasescu 2016). These claims are then summoned into (2) the political representation practice of the river. This process is embedded in for example the strategy group collaboratively deciding on the health and wellbeing of the river and representing the river in court or in the public sphere by TPT. The aforementioned activities are believed to lead to standing of the river in court and decision-making processes, by which actions based on reciprocity (*hau*) can be interpreted as the ‘answer’ to the listening process when taking from the river by living with it. Hereby, taking the river’s health and wellbeing at the centre of this process, an accountability to the river’s health and wellbeing is maintained.

This representative cycle is backed by the holistic and arguably ecocentric moral relation or ethos (as seen in section 5.2), which is now embedded in law.

Figure 3. Tentative cycle of representation





## 7 Concluding remarks

This thesis has given insight into the complexity of politically representing and enfranchising a natural phenomenon, focusing on the different ethical, political, and communicative implications that form the representative practice. The basis of this representation process is formed by people's situated interpretation of their natural environment, and the dynamics of the environmental, cultural, and economic dimensions within the holistic framework of the Whanganui River community (*Te Awa Tupua*). Although the view that nature is voiceless is both pervasive in society and the reviewed literature, we argue that considering its holistic and ecocentric character, *Te Awa Tupua* (comprised of both human and non-human parts) cannot be defined as such. An attitude based on listening is seen as vital to reach a holistic ethos including reciprocity. When we practically allow this communicative ethic as a norm, it can serve as (1) a pre-political practice to epistemologically assess the interests of a natural phenomenon in whichever way (spiritually or scientifically), to (2) determine and maintain the health and wellbeing of it within a deliberative process. However, these assessments are by no means neutrally 'mediating' the Whanganui River, when arguing that representation is based on a preferred relation between the human representative and the river as constituency. Genealogical connections and other personal relations with the river based on geographic presence form a backbone in the practice of claim-making, summoning the preferred relation to the river into being during the representative processes of deliberative strategy-making and enfranchisement by legal standing. However, a challenge emerges in how to reconcile the different knowledge systems when representing TAT as one single entity. Even though the holistic, pluralist nature of the river is recognised, the question remains how the representatives practically 'interweave' knowledge systems when decisions on sustainable reciprocal actions need to be made.

Rights of nature can both serve as a vehicle and a blockade in opening this discursive plurality determining nature's interests or the preferred moral relation to it in which different epistemologies exist side by side. On the one hand, opening possibilities because it legitimises the ecocentric aspiration to include more non-human voices into the political and legal sphere. On the other hand, it can also have a tendency to frame moral relations a certain way which might limit deliberation regarding opposing voices and embed pre-supposed interests and representative-constituency relations by law.

Cases such as TAT show that the world is ready to expand the boundaries of what is represented today and the need to expand our moral rights to others, whether we define them as "voiceless", "marginalised non-humans", "nature" or "spiritual ancestors". It requires a certain flexibility, which in TAT's case has been creatively dealt with by declaring an aggregated natural-cultural phenomenon the status of a legal person, which before was essentially reserved for human-formed constructs such as companies, corporations, and trusts. The experimental character of the case provides space to manoeuvre as not all goals to improve the river's health and wellbeing are 'set in stone'. However, there seems to be a paradox regarding the flexibility of representing nature as

well, and the configurations with existing laws still need to be figured out fitting a natural-cultural construct into a Western legal system which is primarily based on a human-nature divide.

Moreover, the declaration of the river's legal personhood granted standing to the river's interests or, as alternatively argued, rather the moral relation and the accompanying self-definition we want to carry out; feeling united and in solidarity with the environment around us.

However, a constituency is represented in which everyone understands the way the river's 'feedback' (or communicative signals) differently. Concepts to maintain the integrity of the representative process might need to be tightened as opposed to the flexibility needed to regard and embed non-humans in the legal and political processes. The geographically demarcated nature of TAT and the perceived tendency to select representatives based on their (physical) presence to both better understand its needs and have a personal connection with the river do help to set out what is considered legitimate, forming certain representative norms. This geographic, situated character of TAT is hard to transfer to the worldwide movement of rights of nature, as erasure or selective cultural appropriation of 'indigenous knowledge' would seem inevitable. However, the holistic point-of-departure can be applied in general terms, by starting decision-making from a natural phenomenon with standing which needs to be represented, rather than solely matching human interests regarding it.

## 8 Implications and recommendations for future research

The implementation process of TAT's legislation was still in preparatory stage at the moment of conducting this research. It would be fruitful to see how the preliminary thoughts and considerations of the representatives will be turned into actual decision-making, and how collaboratively the representatives consult, discuss, and represent the river's interests and make claims to each other, and how (the relation to) the river is made present in debate. Moreover, we recognise that certain power relations will be evident within these deliberations, based on the support of certain (dominant) discourses (whether it will be the now legitimised holistic worldview or traditional anthropocentric ones) or certain identities based on indigenous/Western knowledge dynamics or minority oppression. We recommend these studies to take a more observational-participatory approach to identify possible conflicts arising in the deliberative arena or in the courtroom.

Furthermore, as other cases of recognising nature's rights are emerging in countries such as Australia<sup>14</sup>, Colombia<sup>15</sup> and the US<sup>16</sup>, it is important to see which representative components are recognised in any context and could be inspired by the Whanganui case. We would like to invite more researchers to empirically analyse other cases in the field to see where the strengths and challenges lay of this fast-developing movement of recognising and giving standing to 'nature's voice' in practice.

We could argue that other cases of rights of nature should take the geographically demarcated approach, so it is easier to determine who can represent nature when taking the localised communicative ethic as a starting point. However, it also raises difficulties in repeating the legal personality concept on (even more) exploited natural phenomena: what would be the criteria of giving a natural entity legal personality to make its implementation viable? Certainly, the acknowledgement of the Māori worldview helped the Whanganui case gain momentum, but how would this work when indigenous knowledge is not considered legitimate within a certain legal framework? What are the differences of cases in which NGOs and other concerned citizens lead a rights of nature case compared to a case presented in this thesis: would a communicative ethic and preferred moral relations face similar opportunities and challenges or would it be more problematic to implement?

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<sup>14</sup> The Guardian, It's only natural: the push to give rivers, mountains and forests legal rights: <https://www.theguardian.com/australia-news/2018/apr/01/its-only-natural-the-push-to-give-rivers-mountains-and-forests-legal-rights>

<sup>15</sup> World Economic Forum, The Colombian Amazon now has the same legal rights as you: <https://www.weforum.org/agenda/2018/04/colombias-top-court-orders-government-to-protect-amazon-forest-in-landmark-case>

<sup>16</sup> The New York Times, Corporations Have Rights. Why Shouldn't Rivers? <https://www.nytimes.com/2017/09/26/us/does-the-colorado-river-have-rights-a-lawsuit-seeks-to-declare-it-a-person.html>

At last, the field of environmental communication has opportunities to expand its focus by analysing empirically how multiple voices are facilitated in the globally growing movement of rights of nature, in which discursive plurality including (formerly marginalised) voices of non-human nature is facilitated. By recognising an enlarged discursive diversity including nature's agency embedded within different kinds of knowledge and experiences, as has been exemplified by this case, the world could rethink the modern human-nature divide.

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## Appendix 1

Table 2. *Tupua te Kawa*, four intrinsic values, taken and (partly) altered from the *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017* subpart 2, section 13. Source: <http://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html>

<p><i>Ko Te Kawa Tuatahi</i></p> <p><i>Ko te Awa te mātāpuna o te ora</i>: the River is the source of spiritual and physical sustenance</p>	<p>Te Awa Tupua is a spiritual and physical entity that supports and sustains both the life and natural resources within the Whanganui River and the health and well-being of the iwi, hapū, and other communities of the River.</p>
<p><i>Ko Te Kawa Tuarua</i></p> <p><i>E rere kau mai i te Awa nui mai i te Kahui Maunga ki Tangaroa</i>: the great River flows from the mountains to the sea</p>	<p>Te Awa Tupua is an indivisible and living whole from the mountains to the sea, incorporating the Whanganui River and all of its physical and metaphysical elements.</p>
<p><i>Ko Te Kawa Tuatoru</i></p> <p><i>Ko au te Awa, ko te Awa ko au</i>: I am the River and the River is me</p>	<p>The iwi and hapū of the Whanganui River have an inalienable connection with, and responsibility to, Te Awa Tupua and its health and well-being.</p>
<p><i>Ko Te Kawa Tuawhā</i></p> <p><i>Ngā manga iti, ngā manga nui e honohono kau ana, ka tupu hei Awa Tupua</i>: the small and large streams that flow into one another form one River</p>	<p>Te Awa Tupua is a singular entity comprised of many elements and communities, working collaboratively for the common purpose of the health and well-being of Te Awa Tupua.</p>

## Appendix 2

The official descriptions are taken directly or summarised from Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, source : <http://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html>

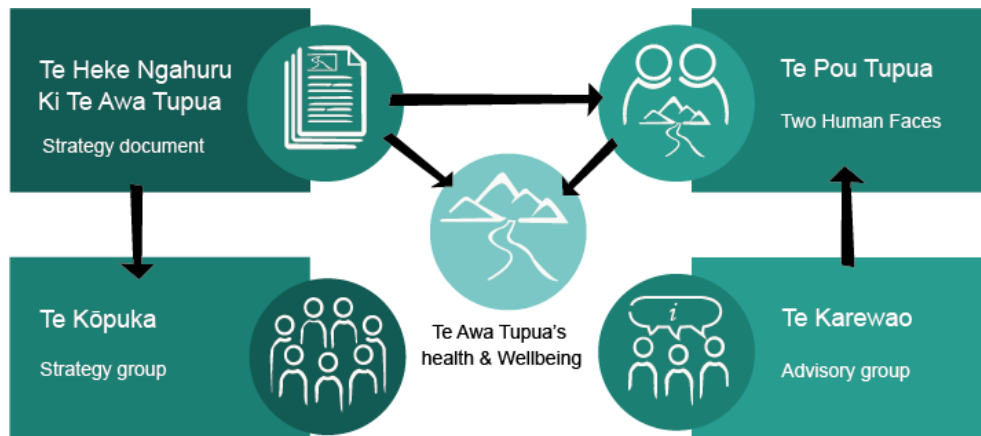
Table 3. Roles within Te Awa Tupua's legal/representative framework

	<i>Official descriptions</i>	<i>Remarks of interviewees' on these roles</i>
Two 'human faces' of the river/ <i>Te Pou Tupua</i>	<p><b>Section 18 &amp; 19:</b> The purpose of <i>Te Pou Tupua</i> is to be the human face of <i>Te Awa Tupua</i> and (legally) act in the name of <i>Te Awa Tupua</i>.</p> <p>Some key functions of <i>Te Pou Tupua</i> are:</p> <ul style="list-style-type: none"> <li>• to act and speak for and on behalf of <i>Te Awa Tupua</i>;</li> <li>• uphold <i>Te Awa Tupua</i>'s status and <i>Tupua te kawa</i> (the 4 intrinsic values)</li> <li>• promote and protect the health and well-being of <i>Te Awa Tupua</i></li> <li>• to administer <i>Te Korotete</i> (the fund)</li> </ul>	<ul style="list-style-type: none"> <li>• jointly appointed by iwi and the Crown, instead of separately</li> <li>• A general trust in them being experienced as they are 'of the river'</li> </ul>
Advisory group/ <i>Te Karewao</i>	<p><b>Section 27 &amp; 28:</b></p> <ul style="list-style-type: none"> <li>• Provide advice and support to <i>Te Pou Tupua</i> in the performance of its functions</li> <li>• Act in the interests of <i>Te Awa Tupua</i> and consistently with <i>Tupua te Kawa</i>.</li> </ul>	<ul style="list-style-type: none"> <li>• lobby between different parties</li> <li>• network to 'test the waters' of decisions</li> <li>• diplomatic influencers</li> </ul>

<p>Strategy group/ <i>Te Kōpuka</i></p>	<p><b>Section 29 - 34:</b> Te Kōpuka is established to be a strategy group for <i>Te Awa Tupua</i>.</p> <ul style="list-style-type: none"> <li>• Te <i>Kōpuka</i> comprises 17 representatives of persons and organisations with interests in the Whanganui River, including iwi, relevant local authorities, departments of State, commercial and recreational users, and environmental groups.</li> <li>• Members act collaboratively to advance the health and well-being of <i>Te Awa Tupua</i>.</li> </ul> <p>The primary function of <i>Te Kōpuka</i> is to develop and approve <i>Te Heke Ngahuru</i> (strategy document) as well as:</p> <ul style="list-style-type: none"> <li>• To monitor the implementations and review the strategy document</li> <li>• To provide a forum for discussion of issues relating to the health and well-being of <i>Te Awa Tupua</i></li> </ul>	<ul style="list-style-type: none"> <li>• being a “superman” or “superwoman” based on different skills needed (e.g. communication, relationship management)</li> <li>• connection between strategy group and sector</li> <li>• have cultural sensitivity; aware of past grievances</li> </ul>
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## Appendix 3

Figure 4: Our interpretation of the role dynamics within Te Awa Tupua's framework



## Appendix 4

### Interview guide:

TAT = Te Awa Tupua (river as a living whole, consisting of all physical and metaphysical elements)

TPT = Te Pou Tupua ('human faces' of TAT)

RON = Rights of Nature

### Prior the interview:

- introduce research project, general theme (about Te Awa Tupua and the interviewee's role in representing it + their perspective)
- set outline of interview (general introduction,
- consent form
- ask if names can be used or should stay anonymous
- ask if interview can be recorded
- if you use Māori terminology, could you please elaborate

### 1. Introduction

*Goal: The personal connection to the river, how the situation was before and how the new legislation influenced this situation.*

Where do you live/come from?

Can you describe yourself shortly?

- Can you give a short description current function (both within TAT and other activities)?
- What is your personal connection to the river?
- Has this relation been affected/changed since the bill passed / TAT was recognised a legal person?
- Can you describe the situation of the Whanganui River before it got recognised as a legal person/TAT?
- How much do you think this situation changes now it has been recognised a legal person?
- How do you think the TAT's legislation works together with the Resource Management Act & other legislation considering nature a resource based on land ownership?

### 2. Representation practice and roles

*Goal: How is the practice of representation understood and on which kinds of (moral) ground and claims is it based? (both formally and morally)*

### 2.1 Formal obligations

- Can you describe your role within Te Awa Tupua framework and could you give any concrete examples what your role will be in the representation process?
- Did you apply for this role to represent the river, or did you get appointed? Why did you apply? / why do you think you got appointed?
- How do you think TAT Bill gives leverage to represent the river's interest? In which ways is it different than before?
- Which qualities do you think a representative should have to represent TAT? (*if not direct representative*)
- Could you describe the personal relations of the people living around?
- Who do you think is credible to represent the river?
- What do you see as the main goal of TAT's representation?
- How do you think the representatives will be evaluated on their work of representing TAT, will there be any sense of feedback process?
- Can you describe the different ways of assessing the health and wellbeing of TAT, which ways is it mediated? How will it be acted upon?
- According to you what should be in the strategy document for the river? (produced by *Te Kōpuka*)

### 2.2 Moral stances

- Do you feel you'd represent TAT/the river as a "physical and metaphysical whole", as described in the act, or you think you will emphasise on certain parts of it based on your background or expertise perhaps?
- How would you define the 'health and wellbeing' of the TAT? What do you consider to be 'good' for the river and all of its elements?
- Do you think your idea of health and wellbeing of the river goes together with your interest in the river?
- Do you have any other (personal) interests, (moral) values and/ or experiences you want to include in the representation of TAT's health and wellbeing?
- How do you think representing natural phenomena compares to representing marginalised cases of humans (disabled, children, future generations)? In what way is it different?
- Do you think the river as a resource and a legal person go together?

### 2.3 About Te Pou Tupua (human faces)

- How would you describe TPT's role representing TAT?
- How do you think TPT will consult the river? (*differences, similarities with own role*)
- Do you think TPT give a legal and transparent 'human voice' to the river? What other alternatives might there be or do you think were considered? (do you consider TAT as voiceless?)
- What role would TPT (in representing TAT) have in shaping public opinion about TAT?

## 3. Comparison and bigger picture rights of nature

*Goal: We want to know how certain concepts can be replicated within other cases of RON, politically representing nature and human-nature relations*

- How do you think this law will change the way people around Whanganui (or New Zealand in general) look at Whanganui?
- Do you see TAT as an example of environmental protection and strengthening Maori cultural justice/values going hand in hand or can give challenges?
- How does TAT as a legal person affect the relationship that people have with nature?
- Which challenges or possible problems do you foresee in representing the river in the future?
- How do you think TAT serves as an example (both in NZ as worldwide) for environmental governance?
- Do you think more natural entities should get the status of legal person in the future. Which criteria do you see fit?

#### **Other possible questions**

- How do you see Mātauranga Māori and Mātauranga Pakeha work together within the implementation of this Bill?
- Do you think the way the representation of TAT is set up/formed could serve as an example for other natural entities? (both locally/globally)
- Do you think certain activities on and around the river should not be permitted anymore as they could be against the river's interest? (as the current legislation says 'current activities on the river will not be affected by this Bill')

#### **Extra questions for (co) appointer Te Pou Tupua from Parliament**

*Goal: As he was involved in developing the legislation of giving personhood to the river, we want to know specifically from him how this process formed the representative construction as it is now and get an insight of why this has been selected to be 'best' way to do it*

- Can you describe your role within the TAT legislation process?
- Could you explain how the different representative bodies of TAT have emerged; what were the reasons behind choosing representatives, strategy group and trust board?
- Why did you choose X as one of the TPT? Can you describe her/his relation to the river (and its surrounding people?)
- Do you think the legal personality concept can travel to other environmental areas in New Zealand?