The Paralysis of Intergenerational Justice
Decolonising entangled futures

Christine J Winter

A thesis submitted to fulfil the requirements for the degree of
Doctor of Philosophy

Faculty of Arts and Social Sciences
The University of Sydney

2017

This is to certify that to the best of my knowledge, the content of this thesis is my own work. This thesis has not been submitted previously either in its entirety or substantially, for a higher degree or qualification at any other university or institute of higher learning.

I certify that the intellectual content of this thesis is the product of my own work and that all the assistance received in preparing this thesis and sources have been acknowledged.

The ethical aspects of this study including all interview research have been approved by the Human Research Ethics Committee (HREC) of the University of Sydney (protocol number 2014/983).

Christine J. Winter

December, 2017

Abstract

The lives of Indigenous Peoples, their compatriots, future generations, nonhuman, and physical environments are inextricably entangled. Intergenerational environmental justice (IEJ) examines aspects of that entanglement. Specifically, it focuses on obligations and duties to provide future generations with environments in which to flourish.

I argue there are three fundamental, interrelated weaknesses in existing theories of IEJ. First, theories take insufficient regard of power relations in settler states. Not only are political and judicial systems framed within Western traditions, but so too are justice theories. Theorists, therefore, appear to endorse and perpetuate the assimilationist project. Second, these theories do not account for entanglements of human cultures, human-nonhuman, past, present and future generations in an adequately inclusive manner. These theoretical oversights exclude aspects of Indigenous people's philosophies and extant lifeways within their frameworks. The theories are unable to accommodate the multiple temporal, spatial and interspecies entanglements that define aspects of Indigenous identity and being. Third, bound by specific ontological parameters, IEJ becomes paralysed in a web of seemingly intractable problems for human and nonhuman within the settler states. To make these arguments, I draw on IEJ theories, critical and decolonial scholarship, and Aotearoa Māori and Australian Aboriginal philosophic perspectives. Case study examples demonstrate that in at least two settler states existing theories of IEJ become unworkable at the intersection with Indigenous communities drawing from different philosophical foundations.

Māori and Aboriginal philosophic approaches to IEJ highlight two things. First, Western IEJ limits the agency of Indigenous communities to fulfil obligations and duties to past and future generations—human and nonhuman—and the environment. And second, by decolonising theory it is feasible to ensure Indigenous and non-Indigenous members of the settler states are embraced by theory, addressing the iniquity of assimilationist practice. Decolonised IEJ embraces multiple entanglements—Indigenous-settler, human-nonhuman, past-present-future—freeing it from a paralyses caused by Western ontological framings.

Acknowledgements

inspiration. Our long conversations about bioethics, pedagogy, and 'the future' ignited this enquiry, and continue to interest and challenge me.

My children, Nick and Alex—each inspires and amazes me constantly. Their unequivocal support, encouragement, understanding and love are the bedrock from which this project arises. Their talents, goodness, work ethic and humility are inspirational.

For the mother I barely knew, in the hope I do justice to the raw genetic material she gifted me. Thanks go too, to my grandmother, aunts and uncles who stepped in to mother me—each lives on in the knowledge, experiences and memories—they gave unstintingly.

This PhD will be submitted in the week of the 100th anniversary of my father's birth. He taught me to love and respect the outdoors, nature and all there is, to approach life with wonder and awe, to constantly seek new knowledge, understanding, and horizons, to never stay still, to be tolerant and always look for the good wherever it lies hidden. His steadfast pride and love were my childhood companions. I trust this work goes some way towards honouring everything he was.

And finally to my amazing partner Brent. I simply would not have started let alone been able to complete this journey had I not had his support, companionship, intellectual stimulation, discerning comments, encouragement and love. You are my rock, inspiration and life. Because words are inadequate to express my gratitude and to acknowledge the extent of your gifts, thank you, just thank you my love.

Interviewees

This is primarily a theoretical thesis, however five people made invaluable contributions to my formative conceptualisations of the key abstract frameworks, philosophical content and practical understandings. I was privileged to speak with these outstandingly generous people. Not only did they give me their time, they trusted me, sight unseen as it were, with their *taonga*—with the treasures of their wisdom, understanding, insights and deep knowledge of Māori, and Aboriginal epistemology, ontology and their active fights for decolonisation.

Marama Fox, Ngāti Kahungunu, Ngāti Porou
Deputy Leader of the Māori Party.
Interview conducted 10 February 2015.
Marama graciously endured my first interview 'experiment'. Her immediately understanding when I talked of my family's historic shame of Māori heritage was breathtakingly empathetic: 'Oh the shame, how I remember the shame,' she shared.
Reference: (int. MF)

Mānuka Hēnare, Ngāti Hauā and Te Aupōuri, Te Rarawa and Ngāti Kahu
Associate Professor. Director, Mira Szászy Research Centre for Māori and Pacific Economic Development, The University of Auckland Business School.
Interview conducted 16 June 2015.
Mānuka's knowledge of Tikanga Māori is legendary, and his influence international.
He found time between a Roman holiday and starting his teaching fellowship at Corpus Christi at Cambridge to Skype with me. His words of encouragement and positivity towards this thesis were invaluable for a nervous, and unsure Post Grad., and his generosity and quick understanding of the epistemological and ontological nuances required for the project to succeed set me on 'the right track'.
Reference: (int. MH)

Anake Goodall, Ngāi Tahu
Executive Chair of the Ākina Foundation and former Chief Executive Officer of Te Rūnanga o Ngāi Tahu and was responsible for managing Ngāi Tahu's Treaty settlement process. He is a member of the Canterbury Earthquake Recovery Authority Review Panel and is an Adjunct Professor at the University of Canterbury. Anake is Chair of the Manawapōpore Trust and

Hillary Institute of International Leadership, and is a Director of PledgeMe and Meridian Energy.

Interview conducted, 24 June 2015.

Anake's life-long interest in issues of social justice, his work for his iwi—Ngai Kahu, his penetrating insights, and contrarian contestation were invaluable in challenging my own critique of both past and present narratives of what it is 'to be Māori'. He talked extensively of the dilemma's facing modern *iwi*, responsibilities to community (local and dispersed) and *whenua.*

Reference: (int. AG)

Huhana Smith, Ngāti Tukorehe, Ngāti Raukawa ki Te Tonga

Head of School of Art, Massey University. Huhana had a lead role in the Manaaki Taha Moana: Enhancing Coastal Ecosystems for Iwi and Hapū project.

Interview conducted: 4 July 2015.

Like Anake, Huhana reflected on the practical challenges of implementing the principles and practice of *kaitiakitanga*. Working with her *hapu* she is instrumental in the stabilisation of extensive dune areas, and the rehabilitation of lands, swamps and waterways degraded by dairy farming. Her support and enthusiasm for this project have buoyed me through the journey.

Reference: (int. HS)

Des Rogers, Southern Arrernte of the Pertame Clan

Former Head of Operations at Aboriginal Housing Australia, Des has extensive experience on Boards and committees established to encourage Aboriginal learning and social advancement.

Interview conducted, 28 November 2016.

Des is an initiated man of the Southern Arrernte of the Pertame Clan, who has worked throughout his life creating business, educational, and social opportunities for Aboriginal people. His thoughtfulness, deep insights and contribution to this project have been invaluable. Such was his generosity he rang me back with new thoughts and contributions.

Reference: (int. DR)

List of Figures

Glossary[1]

Frequently used Māori Words

Aotearoa - the Māori name for New Zealand. It is used alone and as Aotearoa New Zealand. Māori and English are both official languages in the country.

Hapu - extended family, the hapu was the primary political group of pre-European Māori society.

Hau - breath of life and a power for good.

Hui - meeting.

Iwi - tribe. An iwi is made up of a number of hapu.

Kaitiaki (n) - guardian, protector, carer.

Kaitiaki (v) - to guard, protect, care for.

Kaitiakitanga - the guiding principles of care for the environment and future generations.

Kanohi ki te kanohi - face-to-face.

Kai Moana - sea food.

Mana - respect, prestige, charisma.

Mana Moana - authority over the sea, respect coming from guardianship of the seas and sea life.

Mana Whenua - authority over a land area, respect coming from good guardianship of the land and life forms.

Manaatikanga - customs of hospitality.

Mauri - life force.

Maunga - mountain.

Moana - sea.

Mokopuna - grandchildren, future generations.

Pākehā - white New Zealander.

Rahui - temporary prohibition placed over an area, to allow for regeneration of resources, or as mark of respect after a tragic death.

Rohe - territory.

Runanga - An authority acting on behalf of iwi and hapu.

Tangata Whenua - people of the land, Māori.

Tapu - potentiality to be, sacred, also prohibited, restricted, set apart.

Te Ao Turoa - the world of the gods.

Te Tiriti - the Māori language version of the Treaty of Waitangi.

Tiana - child, junior partner.

Tikanga - Māori custom and lore.

Tinana - body.

Taonga - treasure, property.

Tūpuna - ancestor.

Turangawaewae - home place, where you belong and have a right to stand through kinship and whakapapa.

Wairua - akin to soul.

Whakapapa - to place in layers- the complex genealogy connecting all material and spiritual things.

Whanau - family.

Whenua - land.

---

[1] Sources: personal translations cross-referenced against:

Henare, M. (2001). Tapu, Mana, Mauri, Hau, Wairua. In J. A. Grim (Ed.), *Indigenous Traditions and Ecology*.

Cambridge, Massachusetts: Harvard University Press.

Mead, H. M. (2003). Tikanga Māori. Wellington, Aotearoa New Zealand: Huia publishers.

Shirres, M. P. (1982). Tapu. *The Journal of the Polynesian Society*, *91*(1), 29–51. Retrieved from

http://www.jstor.org/stable/20705620

Te Reo Māori: Māori Dictionary http://www.maoridictionary.co.nz/.

Chapter 1   Introduction

You know, I have a culture. I am a cultured person.
[Speaks language.]
I am not something that fell out of the sky, for the pleasure of somebody putting another culture into this cultured being. I am not 'an aboriginal' or indeed 'Indigenous'. I am Arrente-Alyawarra First Nations person. A sovereign person from this country.
[Speaks language.]
I didn't come here from overseas. I came from here. My language. In spite of whiteness trying to penetrate into my brain by assimilationists I am alive. I am here, and I speak my language. I practice the cultural essence of me.
Don't try to suppress me. And don't call me a problem. I am not a problem. I have never left my country, nor have I ceded any part of it. Nobody has entered into a treaty, or talked to me about who I am. I am: Arrente-Alyawarra; Female; Elder; From this country.

Please remember I am not the problem.
(Kunoth-Monk, 2014)

This thesis challenges orthodoxy. It suggests that, despite best intentions, some underlying assumptions of Western justice theories delegitimise their claims to universality. Furthermore, in making universalist claims they perpetuate the colonial project—a project designed, among other things, to suppress and destroy Indigenous Peoples. This may seem a distant problem. The colonial project has succeeded in keeping Indigenous Peoples and the Indigenous 'problem' to which Rosalie Kunoth-Monk refers above, so far to the margins that well-meaning people are not immediately cognisant of potential transgressions of justice in their own theory.[2] Furthermore, and constructively, this thesis proposes that by relinquishing the myth of universality and seeking input from Indigenous ontologies, it is possible to fashion more robust imaginings of justice from which to respond to the crises facing the globe.[3] Makere Stewart-Harawira argues, '[t]o date … outside of Indigenous scholarship itself, within academic circles little serious attention has been paid to examining the possibilities inherent in Indigenous ontologies' to address global problems (Stewart-Harawira, 2005: 34). This thesis seeks to address aspects of that lacuna by establishing the content and context of an intergenerational justice (IJ) that will accommodate the needs of the Indigenous people in the settler states.

Narrowing to (slightly) more manageable proportions, the thesis focuses on IJ, and even more specifically on intergenerational environmental justice (IEJ). Finally, it subjects IEJ to

---

[2] Here and throughout 'Indigenous Peoples' is used as a proper noun. I have therefore capitalised the first letters of the name. Where lower case first letters appear in a quotation, I have not adjusted them.
[3] The crises and Indigenous contribution to the 'world order' are examined in depth by Makere Stewart-Harawira in (Stewart-Harawira, 2005).

the scrutiny of a decolonial lens. For liberal theorists of environmental philosophy, environmental ethics, and political philosophy it identifies underlying assumptions that make their formulations of IEJ unworkable in some contexts, that is, for some Peoples. For liberal philosophers it provides a bridge between Western, Māori and Aboriginal philosophy. For Indigenous Peoples, and Māori and Aboriginal particularly, and indigenous studies scholars this thesis identifies with some specificity why we—Māori and Pākehā, Aboriginal and white Australians—continue to 'talk past each other'. The thesis offers a metaphilosphical account of the incompatibilities of the epistemological and ontological foundations of liberal, Māori and Aboriginal philosophy and theories of IJ particularly. And it is a validation of philosophic traditions outside the Western canon.

I approach the IEJ canon from a perspective of deficit – a deficit which resides in Western thought and ontology. I draw on Māori, Aboriginal and North American First Nations works to expose this deficit in IEJ. I say 'deficit' deliberately provocatively. The thinkers and theorists who inform the work are members of the cultures displaced by colonialism in the settler states. Aotearoa New Zealand,[4] Australia, Canada and USA, four states settled by colonial Britain, are settler states by virtue of the colonial imperative to not only extract resources and hence wealth from the colony, but also to settle the land permanently with their own people and to govern with structures and laws derived from the UK and Europe.[5] The lands of the existing population (the Indigenous Peoples) were forcibly taken, the original inhabitants and their descendants subject to genocide and systematic degradation. Indigenous populations are now minorities forced to operate within the (coercive) dominant political, legal and social paradigms. Within these states, Indigenous Peoples suffer ongoing oppression and disadvantage. A not insignificant part of the colonial project was/is the denigration and repudiation of Indigenous philosophy, political structures, epistemologies, and ontologies (Durie, 1998; Mikaere, 2005; Moreton-Robinson, 2015; Stewart-Harawira, 2005; Turner, 2008; Watson, 2002; 2015; Whyte, 2015; 2017).

However, despite centuries of effort to eliminate Indigenous life ways, knowing, culture and the languages in which these philosophies, political structures, epistemologies, and

---

[4] Māori and English are both official languages in Aotearoa New Zealand (along with NZ Sign Language). Aotearoa is the Māori word used to name the settler state also known as New Zealand. Officially the names may be used alone, or in combination. I choose to use Aotearoa throughout this thesis to name the country of my birth, the country of my ancestors tracing to both the first Polynesian settlers and early English and Irish settlers. I give more comprehensive personal whakapapa (genealogy) in Chapter 7.
[5] It may also be argued the countries of South America are also settler states in that descendants of their colonial rulers, principally Spain and Portugal, also alienated large tracts of land from Indigenous Peoples, settled *in situ* and have imposed legal and political structural controls over the nations.

ontologies are embedded, they live on (Durie 2010; Watson 2015; Whyte 2015) and resonant to the remnant Indigenous citizens of the settler states.[6] Furthermore, for those whom Indigenous philosophy is the core way of being, thinking, and constructing the good life, liberal philosophy and political philosophy are poor surrogates, they are unable to support their definitions of the good life. And to some members of the settler states it is this cultural tenacity that is the 'Indigenous problem'. There remains a strong spoken and unspoken belief that Indigenous Peoples and their compatriots will be better off once everyone is aligned with Western values. This thesis takes a contrary view—it suggests in matters of IEJ *all members* of these societies can benefit from embracing aspects of Indigenous philosophy and values.[7] It suggests Western orthodoxy is unable to contend with the lived experience and needs of the *settlers* of the settler states in the context of IEJ. I seek a path within IEJ to that end.

Divided into three sections, this thesis begins by examining the framing of Western liberal environmental, intergenerational and Indigenous justice theory and secondly reviews decolonial theory.[8] The second section of three chapters looks at Māori and Aboriginal experiences of values-conflict with politics, law and IJ theories. Existing Western IEJ theory is tested against the extant life ways and IEJ obligations and duties of specific Māori and Aboriginal iwi and clans. The structure of these first two sections is deliberately mechanistic

---

[6] According to the Australian Bureau of Statistics Aboriginal and Torres Strait Islanders made up 3% of the total Australian population as at 30 June 2011 (the most recent figures published on their website). In Aotearoa New Zealand Māori are 14.9% (as at 15 March 2013 according to the Statistics New Zealand website), Canadian First Nations people 5.09% (Statistics Canada 2011) and in the USA First Nations people 1.3% (U.S. Census Bureau - however this number is restricted to Native Americans who are classified as 'American Indian and Alaska Native alone') of the totals.

[7] I do not question the possibility of Indigenous philosophy as others have done. I am applying a Western word to an Indigenous context, and acknowledge there is a risk of constraining how we imagine the thinking by applying a Western label. I distinguish cosmology from philosophy by understanding cosmology to incorporate elements of the transcendent and spiritual. Greene identifies Indigenous cosmologies as reflexive, and often describing 'a moral order that governed both nature and man' (Greene, H. F., 2011: 127). These cosmologies may, in contrast to the European conceptualisations, be holistic and/or communitarian and/or nonmaterial and/or place based and/or temporally non-linear. Philosophy I regard as having fewer transcendental elements than cosmology. However, in Māori philosophy the transcendental is always present. The spiritual is constantly entangled with the material (Int. MH.).
I am also cautious about using the term 'cosmology' which has, from my perspective at least, anthropological overtones of inferiority to the organised religions and philosophies of the West. In that the philosophies of Māori and Aboriginal and other Indigenous Peoples may contain the transcendental I suggest that makes them no less evolved than say the body of Christian philosophy. Indeed, each has an extensive pedigree. For instance, Māori philosophies tracing back millennia to Asian roots (Henare, 2001), and Aboriginal philosophies developing over the course of the 65,000 years of continental Australian habitation.
Because of my disquiet with the settler colonial narrative which casts Indigenous cosmology as inferior to Christianity and Western philosophy, I will on most occasions refer to that which some may call cosmology, as philosophy, belief systems or worldviews. Where I use cosmology, I will be specifically referring to the bodies of knowledge containing explanations of life, life form, earth, universe, creation and the transcendental.

[8] I take Western and liberal as descriptors for the philosophic and political environment that dominates within the Anglo-American academy and politics. Each term links back to the enlightenment thinkers, and the tradition of focussing on individual capacity for reason and self-governance as the sites of good and social wellbeing. The tradition is explored incrementally throughout the thesis. 'Western' and 'liberal' will be used interchangeably throughout.

and dichotomised to draw attention to the structure of Western epistemology. The dichotomies are collapsed in the final section which, drawing heavily from Māori philosophy and referencing Aboriginal philosophy, challenges two major conceptual disjunctures in the current literature—understandings of time, and sites of dignity. The goal is to establish a reimagined and inclusive IEJ from within the human rights and capabilities approaches to justice. To do this the structure takes a narrative style. The purpose is to explore an imagining of IEJ which accounts for Indigenous norms on Indigenous terms, and how they might be applied in national and international responses to climate change and environmental degradation. The emphasis throughout is that these are lived experiences: neither the author nor the peoples referenced are suggesting cultures are set in stone. On the contrary, it is the very dynamic nature of culture and philosophy that legitimises the propositions within.

The remainder of this introduction is focused on the philosophic and cosmological cleavages between Western and Indigenous worldviews. It sets these cleavages up as dichotomies. This oversimplifies the complex continua of ways of being. The reality is that worldviews are fuzzy not dichotomised. Highlighting cleavages, however, establishes the context for and nature of the claim that existing IEJ is hegemonic.

Western Liberal Worldview

The settler states are liberal democracies.[9] Individuals elect representatives to govern the state, and each individual has rights against the state—rights to due legal process; freedom of expression, action, and movement; equality and respect; freedom of religion and ideology. The settler states value and claim to uphold the principles of human rights, human equality, and human dignity. These principles have evolved within a distinctive Western liberal worldview and are integral to liberal justice theory. While expressed as universals, these principles are generated within a prescribed universe which imposes limitations on IJ, environmental justice (EJ), and Indigenous justice.

Many conceptions of IJ arising from European worldviews struggle to account for the scale of threats posed by the outcomes of industrialisation and 'development'—climate change,[10]

---

[9] To some extent 'the West', 'settler states' and 'liberal democracies' are used interchangeably throughout. 'The West' and 'liberal democracies' apply to a greater number of countries, however the political and legal regimes within these domains are similarly based in Anglo-European traditions. The settler states are a subset of the former two groups, defined as previously mentioned by their former status as British colonies within whose borders colonists displaced Indigenous populations and allocated lands to themselves for permanent settlement.
[10] Sea level rise, desertification, drought, flooding, increasing incidents of storm events, heat waves, changing

resources extraction,[11] and environmental degradation,[12] that is, threats to environmental sustainability—to temporally distant others. European worldviews are characterised by Bosselmann as 'dualism (of nature and humans), anthropocentrism, materialism, atomism, greed (individualism gone mad) and economism (the myth of no boundaries and limitless opportunities)' (Bosselmann, 2011: 205). It is grounded in a dichotomous relationship between human and the environment, reinforced by enlightenment and post-enlightenment empiricism and the scientific quest to delve deeply into the smallest component parts of the whole (Barad, 2003). Within this view, nature is seen as primarily of instrumental value (Locke, 1997), a resource for human advancement with no, or little, or unquantifiable intrinsic value.[13] 'Every Man', said John Locke, '[has] a right to the Creatures … [and] if anyone had … made himself a Property in any particular thing … [to pass it to] his Children, and they [have] a right to succeed it, and possess it' (Locke, 1997: Treatise 1, Chapter IX, §87). Once 'possessed' nature is property with value. Value is understood to lie in the economic benefits that nature provides—and ownership of nature or at least elements of nature is the foundation of the economy.[14] It is frequently portrayed as wild and savage, to be dominated and tamed by man, particularly in the Christian tradition from which this worldview grew (Rahner, 1993). Fundamentally the world has been divided into the unquantifiable undeveloped environment and the quantifiable economy (Purdy, 2015). It seems that for many there is a fundamental disconnect and a wilful blindness to the entanglement of economy, environment, and human wellbeing. Put another way, the elements of the Western tradition foster ignorance of entangled human and nonhuman.

John Stuart Mill identifies, with an almost breathless incredulity, how,

> …it is to be remarked that some objects exist or grow up spontaneously, of a kind suited to the supply of human wants. There are caves and hollow trees capable of affording shelter; fruits, roots, wild honey, and other natural products, on which human life can be supported. (Mill, 2004: 19)

---

disease vectors, glacier and ice-sheet melt, increased earthquake and volcanic activity, changing seasonal patterns, species loss and stress, loss of human habitat and damage to the built environment and infrastructure (Ajai; Bengtsson, et al. 2011, Braganza 2011, Crutzen 2002, IPCC 2010, Lenton 2011, McGuire 2010, Meinshausen 2011, Rockstrom 2009, Schellnhuber 2011, Steffen 2007, Steffen 2011, Zalasiewicz 2008).

[11] Including but not necessarily limited to mineral extraction, old stand and native forest removal, fishing, habitat removal, dams and water redirection.

[12] Soil nutrient depletion and erosion, soil, air and water pollution and toxicity, mineral depletion, loss of ecological integrity and plant and animal species reduction and extinction (Bosselmann 2011, Brundtland 1987, Collins 2013, Hiskes 2005, 2009, Holland 2008, Sachs 2011).

[13] By 'nature' I mean the dynamic physical world, including all animate and inanimate life forms (animal (including human) and plant), landscape and earth, waters, ocean and atmospheric systems. It will be used interchangeably with the words 'nonhuman' and 'environment' throughout the thesis. The term cosmos goes beyond nature to include the transcendental.

[14] Which is of particular importance in democracies in which governments' performance is measured by economic progress and GDP.

He proceeds to describe the power nature provides—the 'active energies' (ibid: 20)—which can supplement and supplant human labour to produce goods. He even suggests, presciently, the air (if scarce enough) could become a source of wealth. Land and water are part of the economy by dint of scarcity. That which is not scarce, however, 'cannot … bear any value' (ibid.: 22). The value lies in human wants and needs, not in any intrinsic quality of the nonhuman.

Underpinning modern appeals to justice is the dignity of the human person (Kateb, 2011; Rosen 2012; Waldron 2012). Kateb suggests it is dignity that distinguishes human from nonhuman (ibid.). That is, human dignity supports the dichotomy. However, human dignity, a universalistic notion, is inherently partial. The deep-seated well of anthropocentrism is fed from the stream of human dignity. Interestingly, while the philosophical conceptualisation of human dignity traces back to Aristotle, it is a concept with many conceptualisations. It has been used to unite and divide, level and stratify, distinguish and blur distinction (Rosen, 2012; Schroeder, 2010; Waldron, 2012). Although conceptually quixotic, human dignity is (unquestioningly) used as the basis for liberal justice. It denotes people's rights to value, respect, and equality as independent, individual, property accessing human beings. Liberal justice demands all citizens have equal access to dignity supporting environments. These are just demands. In so doing however liberal justice locates dignity in a particularly Western way: on the liberal account, human dignity is materialistic, individualistic, anthropocentric. Furthermore, it is resolutely forward-looking. The focus here, by way of foreground to the thesis, is on the particular Western interpretation of the conditions of and for dignity that frames the way that theories of IEJ have been formulated.

Over the following pages I identify some key cleavages between Western liberalism and Indigenous worldviews which are problematic in justice theorising. They are presented as dichotomous—see Figure 1.1, page 20—however, again I stress, this is a crude representation. These positions rest along continua within cultures and between cultures. The point here is that theories generated from the Western ontologies in the left column are incompatible with justice generated from the Indigenous ontological positions such as those in the right column. Neither can claim to be 'universal'. My goal in laying this out schematically in the introduction is to delineate the parameters of this project.

Materialism

In the liberal West, property ownership is a right, and indeed access to property is regarded as fundamental to attaining full human dignity (see for instance Nussbaum, 2007; Nussbaum 2011). Physical property is owned land or something generated from resources extracted from the land.[15] It is the source of wealth and wellbeing. So inextricably is it bound to notions of wellbeing, liberal governments assess their success by measures of growth in national wealth, generally gross national product (GNP).

Within the liberal Western worldview land, sea, lakes, and waterways are divided into quantified property, to be owned, worked/exploited, and transferred. From them wealth may be generated. Terrestrial, aquatic and aerial spaces and nonhuman life forms are owned by the state, corporations or individuals, or are understood to be available to be owned, used or disposed of by individuals, corporations or states. This ownership right is problematic for both IJ and EJ. It gives the owner almost absolute rights to do as they will with the property and all

Liberal/Rationalist Worldview	Indigenous/Grounded Worldview
Material Property ownership is inherent in dignity. All that is not human may be property. Property rights entitle owners to extract 'value' from property with few limiting proscriptions or prohibitions. Property may be transferred between individual humans—property law is concerned with the interpersonal obligations not the property itself.	**Non-material** Production is geared to sufficiency, without a focus on surplus. 'Ownership' of land is neither an individual right, nor a concept. Relationship to land is approached from a custodial perspective. While territory is described and marked, the relationship with territory rests with the collective not individuals. 'Land law' is based in custodial obligation.
Property-based Landform, waterways, lakes and seas are measurable and quantifiable property. Measured spaces are divided into ownership parcels of property—national, regional, community, and individual. Property has monetary value. Property may be transferred between parties for like property or monetary recompense. Spaces are inhabited by humans as property or are 'natural'. Property contains resources which may be accessed by humans for generation of wealth.	**Place-based** Landform, waterways, lakes and seas are places with which the culture creates relationships - often spiritual relationships - around which story, myth and legend revolve. Law comes from the land, it prescribes relationships, obligations, duties, and ways of being. Place is integral to community and cultural identity. Without place culture is decimated
Individualistic The individual, while part of society and supported by communities, is of ultimate importance. Where community conflicts with individual the individual is privileged. Society should not unduly constrain individual freedoms. Society has a duty to support individually inhering dignity.	**Communitarian** The value of the individual comes from the strength of the community. Obligations to the community are paramount. The collective has responsibility to support the individual. The strength of the whole depends on everyone, everyone

[15] I am therefore distinguishing property from meaning the fundamental access to the mere means of survival, and from the post-material 'stage' in which material needs are satisfied and values ascend in importance. See for instance Chapter 3 in John Meyer's *Engaging the Everyday* for an analysis of these positions (Meyer, 2015). There is too Intellectual Property, generated by the human mind.

	within the group has intrinsic value.
Anthropocentric Mankind is the dominant life force, and justice concerns only mankind. Non-human nature is of instrumental value: it is valued for its potential to humanity. Cultural and natural environments are separate. Cultural environments are regarded by some as more valuable and important than natural environments. "Nature' is wild, out-there and incidental On most accounts dignity inheres in the human alone.	**Holistic** Human part of an integrative whole: justice for human requires justice for all elements of the environment living and non-living. Human is not privileged. All living things are interrelated: overarching principle is balance. Cultural identity and cultural structure is deeply entwined in and with non-human elements of environment. Value is sited in the integrative, symbiotic whole. 'Nature' in everywhere, everything. Dignity and integrity inhere to everything and to the whole.
Discontinuous temporality The present is the most important time period there is. The past exists and is less important than the present. The future is a potential time for the currently living to inhabit: the far future is of little significance in current decision-making.	**Continuous temporality** Present is not privileged. Past and future are integral to present. Conceptions of time as a loop, rather than charting a linear path constantly into the future.

Figure1.1:   Mismatched Discourses

that lies therein (Graham, 2012). Changes that appear minor alterations when conducted by one property owner on one set tract, can be cumulatively large, enormous even, when repeated across numerous tracts (Freygogle, 2012). The impacts may accumulate beyond the property per se, the owner, and immediate community, and through time to future generations (Sinnott-Armstrong, 2010). The effects become issues of IEJ versus individual property rights. Within the liberal context these immediate individual property rights tend to dominate, and trump community or intergenerational rights (Purdy 2015). Liberal materialism, manifest as capitalism, is premised on ownership of nonhuman assets and infinite economic growth trajectories, increasing wealth and ever sophisticated technological fixes (Stern, 2007).

Previously, the concerns of IJ focussed on ensuring the living did not save too much for future generations (Gardiner, 2011b; Stern, 2007). At issue was the fear future generations would reap benefits while the living bore the burdens. The allocation of burdens has been inverted in modern IEJ theory. Today the focus is on ensuring 'the profligate generation' (Gardiner, 2011b: 153) do not plunder the earth at the expense of the wellbeing of future generations. Climate change ethics and political responses to climate change provide interesting insights into liberal materialism. As scientists call for reductions in greenhouse gas emissions, sections of the capitalist machine, members of the public and politicians call for continuing growth and continuity of practice. Some look to new technology and geo-engineering for salves and to bolster than continuity. There need be, on this account, no rupture of nor challenge to practice. The ongoing reliance on science to facilitate future growth remains.

In this scenario, living generations do not have to curtail environmentally damaging activities. Science, the inheritance from the living, will sufficiently compensate the future for any damaged caused by the benefits accrued by the living. At the intersection with Indigenous justice, this worldview can be problematic. Science and technology are poor substitutes. They have no compensatory value to people for whom nonhuman are kin, history and the sacred are emplaced and cultural continuity and survival depends on environmentally protective practice and stable physical connection.

Individualism

Locating the individual as the significant unit of justice is integral to many liberal theories (see notably the work of the two 'greats' of the twentieth century Robert Nozick and John Rawls (Nozick, 1999; Rawls 2009), and for a more recent and nuanced account Sharon Krause (Krause, 2015)). The individual person is the rights bearer. Where rights of the individual are privileged over community the individual is protected from domination by unreasonable or undignified constraint by the community or factions within the community (Nozick, 1999). Issues of IJ, EJ and Indigenous justice, however, concern both individual and community, may be generated by community and in large measure require community-level responses (Gardiner, 2010).

As identified earlier, underscoring individualism is the idea of human dignity. There are two broad justificatory claims from which human dignity is conceptualised within the liberal tradition. It is conceived as an intrinsic quality or as a status (Rosen, 2012; Schachter, 1983; Schroeder, 2010). On the intrinsic account, humans have dignity because it is an inviolable quality, a special condition of humanness. Dignity requires that people are treated equally, have access to sufficient resources to live a fulfilling life, to exercise a range of basic freedoms and to be free from restrictions to fulfilment (Rosen, 2012; Schachter, 1983; Schroeder, 2010). On the status account, humans have dignity because they are 'other', separate from nature. Status dignity, in its twentieth and twenty-first century conations, levels all people up to the same status—none above, none below, all equal—which then imposes the same obligations as listed for intrinsic dignity (for the most developed account of equal status dignity see Jeremy Waldron's Tanner Lectures, Waldron, 2012).

Where IJ is conceived as a contractual agreement to redistribute benefits and burdens, locating justice in the dignity of the individual can be problematic. The individuals of the future

are unidentifiable and theoretically can offer nothing to the living. This is the crux of Derek Parfit's non-identity problem (Parfit, 1984)—aspects of which are addressed later. But, the environmental problems of IJ and EJ are communal. A justice that preferences individual over community, is then shackled. Individualist approaches are inadequate to the task of crafting IJ to meet a problem caused by communities and affecting communities of unknown others (Ball, 1985; Caney, 2008; Hiskes, 2005; Hiskes, 2009; de Shalit,1995; Parfit 1984).

So far I have suggested a major impediment to IEJ is individualism, and it may appear that all liberal theories of IJ are woven from identical individualist threads. That is not so. There are variations. Western justice theories sit along the continuum from individualism to communitarianism (see for instance: de Shalit, 1995; Kymlicka, 1994; MacIntyre, 1984; Taylor, 1997; Walzer, 1990, for communitarian approaches). Communitarians suggest community is the foundation of human wellbeing. They site individual wellbeing within and dependent on the strength and wellbeing of their society. De Shalit (ibid) constructs a communitarian theory of IJ, which overcomes the contractual impediments mentioned above by including future generations as members of the ongoing community and community projects. However, the political environment of the settler states and dominant culture still tend towards the individualistic.

While the communitarian philosophies of Kymlicka, MacIntyre, Taylor, or Walzer for instance, might be able to encompass aspects of Indigenous communal ontologies, the theory is separate from the colonial/post-colonial *experience* of Māori and Aboriginal. In this their ability to effect justice for peoples for whom community is the source of individual dignity becomes problematic. For such communitarian peoples' imaginings of dignity supporting environments are communal environments rather than solely a function of individual actualisation (Carruthers, 2010). Additionally, there are ontological differences between communitarians, Māori, and Aboriginal in defining what constitutes 'community'.

Anthropocentrism

Dignity is so tightly glued to human in the liberal conceptualisations many theorists refer to dignity without prefixing 'human'. This is not particularly problematic as prior to the late 20th early 21st centuries, all theorists bar one (Thomas Aquinas) understood dignity as attributable to humans alone (Rosen, 2012; Saccà, 2013; Schachter, 1983; Schroeder, 2012). The problem lies in conceiving of this as a neutrally universal conceptualisation and in

the impact it has on understanding human immersion in, entanglement with, and dependence on, nonhuman.

Dignity is used as a tool to separate human from nonhuman—to maintain a 'convenient fiction' of 'human exceptionalism and separation from the rest of the natural world' (Schlosberg, 2014: 75). Locke, drawing from First Testament scriptures, understands the relationship of human to nonhuman to be one of 'Dominion over' (Locke, 1997: Book 1 §28). Species and environment are given by God to all 'Mankind in common' (Locke, 1997: Book 1 §230). Human and nonhuman are disentangled by the human right to use nonhuman as property and to 'make use of those things, that [are] necessary or useful to his Being' (Locke, 1997: Book 1 §86). Similarly, in the twentieth century the liberal giants Rawls and Nozick develop theories of liberal justice for human alone, conceptualised outside of, and apart from the nonhuman realm (Rawls, 2009; Nozick, 1999).

Whether people acknowledge it or not, human life is dependent on the environment. People, like any planetary life-form, depend on an ideal climate—not too hot, not too cold, not too wet, not too dry. Clean water and air, and adequate supplies of nutrients so foods can flourish, are the fundamental building blocks of life, the component parts, as it were, of survival. These basics are addressed by some theories—Humans Rights and the Capabilities Approaches spring to mind immediately (for instance such works as Hiskes, 2005; 2009; Holland, 2008a; 2008b; Nussbaum 2007; 2011; Schlosberg, 2012; 2014). However, there are people who seek more than this from the environment. For them, it can also be a source of enjoyment, mental and physical sustenance, of spiritual nourishment and/or psychological strength, beauty and artistic inspiration, physical challenge and risk—non-monetary, non-material benefits of a healthy and vibrant environment. And there can be more.

For some people, there is a deep twining of self with environment, a recognition of dependency and/or a willingness to acknowledge and celebrate the immersive. For Māori and Aboriginal culture and environment are inseparable: culture is tied to place—degraded place is cultural death (Durie, 1998; 2010; Moreton-Robinson, 2015; Stewart-Harawira, 2005; Watene, 2016; Watson 2002; 2015; Yunupingu 1997). And there is more still. Self can be and is defined by some in relationships with nonhuman kin. This is to understand human and nonhuman in an intimate commingling (Henare 2001; Moreton-Robinson, 2015; Randall, 2003; Roberts, 2004; Walker 1992; Watson, 2015). However, theirs is not the dominant voice within the liberal Western discourse. That discourse remains firmly embedded in separation:

human or nature; mankind against nature; humanity's domination of nature; and economic exploitation of nature.

IJ requires in part an assessment of the environmental conditions future generations will be left: the living must decide what, if any, obligations exist to those who will inherit the legacies of current consumption practices. They must decide what benefits they may extract at the cost of delayed burdens to be pushed to future generations. EJ requires an examination of the distribution of the costs amongst peoples, and a commitment to ensure they are not disproportionately borne by people of colour, Indigenous communities and minorities within states and internationally. Indigenous justice requires an examination of the form in which dignity is conceptualised within cultures of Indigenous Peoples and a commitment to providing dignity supporting environments as defined by their own cultural traditions.

Temporality

The West describes time scientifically. It tick-tocks forward. People are 'time poor', work '24/7', and trudge towards vacations, anniversaries and year's end. Economics and business have a generally short-term focus—quarterly, and annual reports, 5-10 year strategic plans.[16] Governments are re-elected on 3-4 year cycles. While physicists may delve into the complexities of space-time dimensions, everyday politics focus on culturally significant past events, the present and near future. On superficial and perhaps cynical observation governments appear to think and plan in periods marked by political terms—even the weekly public opinion polling cycle.

Climate change, landform degradation, species extinctions, loss of top-soils, and various forms of toxic pollution have brought attention to very long-term future time, and a very long-term regard in justice theory. The questions taxing theorists and policymakers relate to benefit- and burden-sharing between those who pollute and degrade and those upon whom that pollution and degradation most imposes. What proportion of benefits may the living take, and how much of the burden must future generations shoulder?

Rather like in economics and politics, most theories of IEJ focus on the immediate and/or near distant future (de-Shalit, 1995; Gardiner, 2011b; Hiskes, 2009; Parfit, 1984; Thompson,

---

[16] That said some companies are now focussing further forward. SoftBank of Japan for instance has a 300-year vision/business plan (SoftBank Corporate Group, 2017).

2010). It is hard to conceptualise obligations of justice into the very far future where beneficiaries may not be identified nor their circumstances fathomed. Are the obligations dependent on identity, nationhood, distribution, contract? None of these provide any certainty from which to act.

Some theorists, for whom continuity of community and/or recognition of inherited gifts and benefits are important, integrate obligations to ancestors in their IJ theory (O'Neill, 1993; Page, 1999; 2007b). The suggestion is, we owe to future generations at least a similar package of goods as were inherited from the previous generation. This is, however, a rare argument within the canon. The point here is that time is understood within the Western worldview to have primarily linear characteristics. That which passes is not and cannot be revisited. It cannot re-emerge. Time is understood as forward facing with the past behind and in the background.

This loss of past is not the only experience Aboriginal Australians or Māori have of time (Love, 2013; Stewart-Harawira, 2005; Watson, 2015). Where IEJ assumes this linear projection in which the bulk of obligations and duties accrue to the living and near future generations, peoples with different understandings of time become marginalised.

Identified here are a series of assumptions and principles embedded in liberally based Western philosophy, political philosophy, policy and legislation: the pre-eminence of material property, land, waters and seas as quantified ownership parcels of passive space, the dominance of human over nonhuman, the individual preeminent to community, and a privileging of present and immediate future.[17] Each creates an impediment to EJ and IJ; and combined they stall the development of theories, policies, and practices which satisfactorily address climate change, resource extraction and environmental degradation. Simultaneously there is a presumption this Western ontology represents the 'end of history' (Fukuyama, 2002), that is ultimately the 'best', or ideal of human organisation and being, an ontological framework suited to all people, and one to which all *ipso facto* aspire. There is also a presumption of neutrality in justice theory and it is that neutrality I challenge. If different living

---

[17] As noted earlier, the ontologies are presented as dichotomous in the diagram and discussion—it's a false dichotomy used to simply highlight key ontological opposites. The reality is more like an ontological continuum. A range of ontologies emerge in Western philosophy and society, and Indigenous communities and individuals in the settler states embrace ontologies across the continuum.

cultures are based in different worldviews, derived from different ontological premises, IJ and EJ based in the liberal framework are neither neutral nor impartial (Barry, 2002), indeed, quite the opposite, they have an inherent cultural bias.

Indigenous Worldviews

> …consider the question of justice—the source of notions of right and wrong that underpin all discussions of the nature and use of power. The dominant Western conception of justice is rooted in a fundamentally individualistic, materialistic ideal of equality or sameness. By contrast, Indigenous notions of justice arose within the contest of belief in a universal relationship among all the elements that make up our universe. Native ideas centre on the imperative of respectful, balanced coexistence among all human, animal and spiritual beings, together with the earth. Justice is seen as a perpetual process of maintaining that crucial balance and demonstrating true respect for the power and dignity of each part of the circle of interdependency.
> (Alfred, 1999: 42)

Indigenous worldviews continue to resonate in and guide people's lives.[18] While Indigenous Peoples who reside within the borders of the settler states may be culturally and spatially marginalised by (post)-colonialism, the cultures endure.[19] These durable cultures offer their people direction in pursuit of a 'good life', a life well lived. Chapters 4-6 draw on case studies to identify the living expression of traditional and unique cosmologies and their modern variants. In Chapters 7 and 8 I draw from Indigenous philosophy which continues to guide daily practices of Indigenous IEJ to highlight how two philosophic domains, time and dignity, can be redrawn from Māori ontology to satisfy both Indigenous and Western demands for IEJ.

Indigenous worldviews and philosophies have been wilfully ignored, disparaged and trivialised by European colonisers (Hoagland, 2007; Mills, 2007; Tully, 2002). Despite active attempts to replace, supplant and eliminate these beliefs and understandings of the world, they remain relevant to the lives of living Indigenous communities, living people, on behalf of whom the settler states enact policy, based in the dominant non-neutral liberal philosophies. These enactments impact existing lives and will impact future generations of Indigenous communities. A new conception of IEJ could, however, encompass and support Indigenous and non-Indigenous alike.

---

[18] Globally the number of people identifying as Indigenous is cited as 370,000-400,000 (see for instance United Nations, 2013: 003 and Whyte:2017: 88).

[19] They are among the people most vulnerable to environmental harms (Carruthers, 2010; Pellow, 2016; Whyte, 2013; 2014; 2015; 2017). Environmental harms threaten not only the physical welfare of Indigenous Peoples but also the foundations of culture and identity engendered from human-nonhuman interconnections.

Some Indigenous ontologies, such as those found among the Aboriginal people of Australia, Māori of Aotearoa and North and South American Indigenous Peoples, are characterised as holistic: people have a co-participatory role with the ecosystem (Burarrwanga, L. et al., 2012). Without wrenching dichotomy, human and nature exist in/on a dynamic continuum. So intimate can be the connection the work by Burarrwanga et al includes;

> our homeland of Bawaka as co-author. That's because the land, the water, the animals, the plants, the rocks, the thought and songs that make up Bawaka contribute to what we are saying here in important ways. They speak to us, inform what we do and have guided our thinking and talking (ibid: Loc 324 of 3120).

This is the ground within which some Indigenous traditions are rooted, an ontology where there is no significant differentiation between human and nature. A complete counterpoint to the liberal Western binary human-nature, civilised-wild, tamed-hostile, from a holistic perspective '[h]umans are part of nature. Humans can no more go out into nature than they can go out into their bodies' (Greene, H. F., 2011: 132).

Liberal theories of justice claim to be neutral and impartial frameworks of justice (Barry, 2002).[20] They should, therefore, evince dignity supporting environments for all peoples across cultural divides, and not simply ignore ways of thinking that do not fit an arbitrary and incorrect notion of 'universal'. What does IJ look like if we are to account for the ontologies of a range of Indigenous Peoples? Can we formulate, within the Western canon, an IJ that provides for Indigenous Peoples within the settler states? Are liberal theories capable of doing this or are the differences so great the formulation of justice is different?

One place to start this conversation is to consider why the United Nations felt the necessity to create the Declaration of the Rights of Indigenous Peoples (UNDRIP)—what is unique to Indigenous Peoples that makes the UDHR insufficient to support their dignity and capabilities? The brief answer is there are assumptions within the UDHR which do not work for Indigenous Peoples—assumptions about material versus nonmaterial needs, human relationships with place, the primacy of individuals or community, relationships with and to other living creatures, plants and the inanimate world, and conceptions of time. The philosophies that determine their values, lore and laws create a set of life needs that cannot be protected by the UDHR, in fact, worse, the UDHR undermines their lifestyle integrity.

---

[20] A claim that is critiqued and challenged, as will be explored throughout Chapters 3-8. Nevertheless, no challenge has as yet moved sufficiently beyond the confines of Western orthodoxies to fully accommodate the Māori and Aboriginal philosophies explored here.

There is a blindness in these liberal assumptions, an underlying and pervasive bias the slips unseen, unqualified and un-comprehended into well-meaning and, in theory at least, neutral thinking. This is Charles Mills' 'epistemological ignorance'. The creation by a dominant culture of a body of knowledge which has deliberately ignored the real lived experience of a sector of the community. So pervasive is the 'unknown' it becomes invisible and the dominant society is screened from impacts on that 'invisible' sector of society (Mills, 1997; 2007). Sullivan expanded Mills' understanding of the Black American experience to embrace the Puerto Rican experience (Sullivan, 2007). With American colonial rule Puerto Ricans too, she argues, are subject to epistemological ignorance. Their experience, history and reality are whitewashed from the dominant discourse. Opportunities for equality and just treatment are forestalled by epistemologies blind to inequality and iniquity.

Dotson and Whyte describe an 'unknowability' of the Indigenous experience as a feature of post-colonial states (Dotson & Whyte, 2013). They, along with Figueroa et al (Figueroa, 2008), argue that unless members of the dominant culture experience, not intellectually, but *in situ*, the being-of Indigenous communities, those Indigenous communities remain invisible and incomprehensible to policymakers and the community at large. Society can then continue to assume policy and philosophy are neutral because they do not know otherwise.

There is a more sinister gloss to this whitewashing—an epistemological violence borne of silencing the voices of Peoples (Dotson 2011, 2014). Dotson's argument and that of this thesis is that epistemological ignorance is not a product of benign neglect, or a lack of imagination within the academy (and society and politics). Rather epistemological ignorance, and unknowability, are deliberate acts of exclusion and extended violence against the original peoples of the settler states. When the epistemologies of Māori and Aboriginal are excluded and belittled (as 'primitive') there is 'an unwarranted infringement of the epistemic agency of knowers' (Dotson, 2014: 115). There is a fundamental injustice embedded in an IEJ theorised within the epistemologies (and ontologies) of liberal philosophy when the theory is inadequate to resolve intergenerational environmental harms not only to Western heirs but also Indigenous Peoples who have already a body of theory and practice that overcomes those inadequacies.

For some Indigenous communities, the assumptions I have just outlined for liberal justice are the antithesis of their own: they are the diametric opposite, as Taiaiake Alfred identifies above. It would seem then that an IJ, EJ or IEJ based in liberal values could in many respects

29

be taken to be the antithesis of one conceived from Indigenous perspectives. A brief survey of Indigenous frameworks follows here. In echoing the liberal worldview that dissects and compartmentalises knowledge, society, economics and the elements of the nonhuman realm, dissociating each from the other and elevating human to overlord status, the point here is to draw the reader to consider how unknowable the indigenous perspectives are within the dominant cultures of the settler states.[21] These states remain, as it were, epistemologically ignorant. This is a broad overview, containing elements that may or may not be included by any one Indigenous Peoples' worldview. They all feature in some Indigenous worldviews: non-materiality, sense of place, communitarianism, holism, and nonlinear temporality.

Non-Material

To talk of non-materiality within societies is not to suggest that the people as individuals and groups did not value 'things'. All societies seem to create treasures of some description: artworks, personal adornments, refined hunting, building, cutting and grinding tools, ornate boats, memorials, clothing, and shelter. A non-materialistic society differs from the distinctly materialistic liberal society in two fundamental dimensions: production is geared for group sufficiency, and land- and water-based resources are identified as places of attachment to be engaged with, husbanded and passed to generations to come.

A focus on sufficiency enables communities to conserve environmental goods particularly. Where a community has enough territory to support their population, which was not always the situation perhaps, then they were and are able to produce from that land enough to feed, clothe and provide the essentials of shelter and cultural activities and to pass to future generations a healthy environment: one which is at least as healthy as they themselves inherited.

This is in some ways a utopian view, in that it is certainly the case that some Indigenous communities have been responsible for extinction events—the Moa, a large flightless bird, was hunted to extinction by Māori for instance—however, there is clear evidence of respect for environment and active conservation within knowledge practices of Indigenous communities historically and in the present (Gammage, 2011; Turia, 2012). In part this can be attributed to lack of automation, but also to cultural factors: the ability to learn and will to work

---

[21] It is important to note though that in doing so I have followed a Western tradition of atomisation that conflicts with the organisation of knowledge, the ways of being and the values of the people with whom this thesis engages.

with other elements resonates throughout various Indigenous discourses (Alfred, 1999; Int. AG,; Turia, 2012; Turner, 2008).

The form and structure of territorial 'ownership' and concepts of custodianship are the domain in which Indigenous communities' non-materiality dramatically contrasts with that of European-based cultures. The territorial domains of various community groupings, family, clan, tribe, are marked and acknowledged. Wars over and incursions into territories are historical facts, much as they were in Europe and continue to be around the globe.

The difference lies in the ownership patterns within the territory. Land and/or the resources on and in it were not, and are still not within traditionally-based Indigenous cultures, owned by individuals, seen as representative of financial assets, nor transferrable to other individuals for monetary consideration (M. Graham, 1999: 2008; Yunupingu, 1997). Land and resources are seen as inalienable, material and spiritual assets, and sources of identity (Alfred, 2005; Durie, 1998; 2010; M. Graham, 1999: 2008; Sinclair, 1992; Whyte, 2017). The good of the whole is derivative of the health of nonhuman. Importantly it is seen as intergenerationally inalienable, a dynamic something to be passed from generation to generation within the same community.

'The trend in international and regional law is to use the legal framework of 'property' as a foundation for Indigenous claims to land' (L. Graham & Friederichs, 2012: 6). However, as Graham notes, this does not capture Indigenous People's worldview of land and marks an example of how the application of liberal justice and law can, although well intentioned, mismatch with Indigenous IEJ. To accommodate the Indigenous ownership structures an expansion of the concept of property is required. Graham & Friederichs cite some examples in international law (such as in the Kenyan case of the Ruby mine, national park and the Endorois people (ibid.)).

A broader notion of property to accommodate a different worldview, a view from place rather than monetised resource is needed to enable settler states to fulfil obligations of '…international human rights law [which] requires that a nation state conduct meaningful consultations with Indigenous Peoples even when an Indigenous community does not have recognised domestic "legal" title to the lands or natural resources' (L. Graham & Friederichs, 2012: 12).

Place-Based

Indigenous discourse focuses on place as a source of identity rather than as alien and alienable property. Landform, waterways, lakes, and seas are places with which the cultures create relationships — including spiritual relationships — around which story, myth, and legend revolve, and from which 'law' is made (Bird Rose, 2000). Culture and individual identity are closely associated with place (Bird Rose, 2000; 2012; Burarrwanga et al., 2012; M. Graham, 2008; Panelli & Tipa, 2007; Selby, Moore, & Mulholland, 2010; Turia, 2012; Watson, 2002).

Variously ancestors, gods, animals, and spirits arise from the landforms, waterways, lakes, and seas (hereafter landscape) that form the places of Indigenous cultures (Bird Rose, 2000; Povinelli, 2016). All contribute to the creation of culture, social norms and behavioural practices within the cultures. The landscape might be described as the 'books' of non-booked cultures. In the same way that culture and knowledge are passed between generations within the 'booked' societies, the landscape forms the medium of transmission within the Indigenous generations (Povinelli, 2016). History is memorialised in the landscape. Without the in-tact landscape and forms, there is no mode of transmission, no heuristic for memory.

Law arising from landscape tells of immutable truths (M. Graham, 2013; Watson, 2015). The law arises from the repeated patterns and interactions of all elements of landscape and environment. In upsetting the balance, the law is broken. 'Modern' land management, extractive industries, mining and land re-formation, and toxic waste deposits all transgress place-based law. The land prescribes the relationships, obligations, duties and ways of interaction necessary for harmonious interactions between people and people and environment (Watson, 2015).

In this context, the form that IJ takes is very different to a property-based IJ in which loss of landscape by one generation may be offset by the transference of financial assets to future generations. Without an intact-place Indigenous Peoples are unable to establish identity nor transfer culture or knowledge—that leaves an impoverished world for future generations.

Community Based

The natural order of the universe is interpreted by Māori and Aboriginal people as one of interrelationships (Durie, 1998; Randall 2003). Individuals exist, however, the dependency of

the individual (human, animal, plant, landform) on an integrated whole creates a framework in which a principle of balance between the elements is paramount (Bird Rose, 2000). The individual has duties to the group and the community to the individual. From early childhood, focus is on sharing and contributing (M. Graham, 2008).

Within this life way, the individual is an integral and important element of something more (Bird Rose, 2000; M. Graham, 2008). The concept of an individual right taking precedence over the good of the group is foreign. The focus is on the survival and continuity of the community, linking from past to present into the future. IJ focussed in community is for these Indigenous communities unproblematic.

A communitarian social order expects to work from the past and to nurture culture and environment for future generations. The expectation is that society will be sustained through time, that dignity comes from continuity and expectations of cultural longevity (Bird Rose, 2000). The expectations are for more than just cultural continuity: the sense of community embraces living and non-living matter beyond the human (Bird Rose, 2012).

Within these worldviews is a respect for the interrelationships between and continuity of all matter. Not only is the individual not privileged over community, nor is human privileged over nonhuman. Community is the whole. Dignity is situated in the continuity of this whole community. The realisation of 'human rights [for such communities] … necessitate a surrounding environment which is intact' (L. Graham & Friederichs, 2012: 14).

From this perspective grows the potential for harmonious and mutually supportive interaction with people and nature. Without romanticising the relationship, and without suggesting that all Indigenous practices are either conservationist or perfect, it is a relationship that recognises the intimate interconnection between mankind and the physical, biotic and animal elements of the world. It acknowledges the immersion of mankind in nature. It is not a relationship of domination, rather it thrives from inter-relationships established through a range of cultural practices unique to each society. Bruce Reyburn describes his perspective of the human role in nature as one in which people 'are its intelligence, playing a vital role in the self-government of the interactions between species and environment' (Reyburn, 1988: 1). It seems the relationship of interactions between all species is acknowledged here, with no particularly hierarchical domination. If there is a hierarchy, then it is a hierarchy of custodianship. And it is a relationship from which we could anticipate IJ will take a different

form to that generated within the liberal Western paradigm of domination, resource monetisation and property rights. It is a practice of justice that considers nature alongside, or internal/inherent to, human.

Holism

A holistic worldview does not privilege humans. While the special features of what it is to be human are acknowledged, to be human does not grant extraordinary power or rights over nonhuman life and non-living matter. Rather there is an understanding of connectedness between human and nonhuman, and a recognition of interconnectivity between living and non-living elements of the environment.

'Other' is not owned, dominated, nor tamed simply for human advantage. Other is to be respected, husbanded and supported as an integral whole and to ensure the wellbeing of human as one element of a total wellbeing (Bird Rose, 2012; Muecke, 2004). Within this understanding of people and environment obligations of justice extend to all living and non-living matter without an extensive privileging of human (M. Graham, 2008). There is a deep respect for, and understanding of interrelationships between all environmental elements, with the maintenance of balance paramount.

Importantly cultural identity and structure are deeply entwined in and with the non-human. Animals, plants, and landscape elements are twinned with aspects of human behaviour and being. The wellbeing of human and cultural continuity are tied within the wellbeing and continuity of non-human elements of environment. Everything has a dignity and integrity to be honoured and nurtured. Rather than dichotomisation of culture and nature, there is a flowing connectivity between the elements.

Temporal Loops

Time in some Indigenous societies does not privilege the present, nor charge on a linear path into the future. It is, conceptualised as a loop or spiral (Dupuy, n.d.; Stewart-Harawira, 2005; Watson, 2015), what is was and always will be. Past and future are integral to present—daily lived experience includes them all. And thus the present is not privileged: it is one of equals as it were.

Where past present and future are held to be concurrent to privilege any one of those time brackets is inconceivable. Where present and future are understood to exist along an arc within a spiral that includes the past, you understand the past as a constant reference and point of iteration. One's acts in the present then, are respectfully referenced from the past and consider future generations as future referees of what is now current. In both scenarios, the former a reference to the cyclic nature of Aboriginal imaginings of time (Lee, 2006; Povinelli, 2016), and Māori understanding of spiral time (McKay & Walmsley, 2003; Stewart-Harawira, 2005) past and future are intimate bedfellows to present.

While Western IJ focuses almost exclusively on future generations, Indigenous IJ is concerned with both ancestors and future generations. Importantly, and in contrast with most Western conceptions of IJ, obligations to ancestors are taken as seriously as obligations to future generations. Where time is understood to loop and spiral, reflexively protects the present for the future, while ensuring the future is no less than the past.

Mismatched Discourses

Fig 1.1 summarises the foundations of mismatched discourses: between the dominant society in settler states on one hand and some of the Indigenous Peoples and sub-nations within their borders on the other.[22] Decisions of government and business that affect the natural environment, resource allocations, land degradation and climate change have both current and long-term impacts. Additionally, these decisions are made within frame of the dominant worldview and liberal conceptualisation of justice. While Indigenous traditions, lifeways and cultural norms remain marginalised, the dominant culture remains blind to transgressing boundaries thus diminishing the being of Indigenous people and Peoples. It remains (wilfully) ignorant of the ways in which policy negates their agency and dignity.

As Indigenous People and well-meaning members of the dominant cultures seek redress for past injustices and the elimination of injustice in the present and future, it is necessary to

---

[22] As noted earlier, the ontologies are presented as dichotomous in the diagram and discussion—it's a false dichotomy used to simply highlight key ontological opposites. The reality is more like an ontological continuum. A range of ontologies emerge in Western philosophy and society, and Indigenous communities and individuals in the settler states embrace ontologies across the continuum.

consider these fundamental conceptual differences when imagining what a dignity-supporting environment for future generations may represent.

In examining Indigenous conceptions of IJ I will be attempting to establish if non-materiality and place-base, community, holism, and temporal flow are inextricably linked, or if a holistic worldview alone might be sufficient to provide the necessary framework to expand justice theory to adequately account for both obligations between generations, and living and future Indigenous Peoples in national and international policy formulation.

If colonial and post-colonial epistemologies of ignorance (Mills, 2007) are built into existing frameworks of IJ, justice is failed, and injustices to Indigenous Peoples perpetuated. Worse, if justice theory perpetrates and perpetuates epistemological violence against and epistemological exclusion of any group of people, it is unjust (Dotson, 2011, 2014). An examination of selected Indigenous worldviews and lore, how the frameworks operate and, where it exists, the implementation of Indigenous-based concepts in current law and policy may allow us to add to and strengthen understandings of IJ, moving beyond the current post-enlightenment 'European cosmology' (Greene, 2011) into new relationships between policy, Indigenous communities, and nature.

These lifeways may also provide an alternative theoretical framework for IJ from which to address global anthropogenic environmental degradation. By undertaking case study analysis of two culturally and geographically distinct Indigenous societies (Australian Aboriginal and Aotearoa Māori) I will explore an imagining of IJ which accounts for Indigenous holistic norms. In particular, I will see if those norms may be successfully integrated into any existing justice frameworks.

Each Chapter from 4-8 examines both a school of IEJ and a Māori or Aboriginal philosophic element. Counterintuitively, to do this I have artificially separated each element of the entangled philosophies of Māori and Aboriginal. It requires Herculean effort to keep these elements detached. Chapters 4-8 each deal with one aspect of the mismatched discourses summarised above. Chapter 4 draws from Te Whanau a Apanui's experience from the East Cape region of Aotearoa as they engaged with the Crown and High Court of New Zealand over the opening of new oil fields off the coastal margins of the *iwi's ruhoe*[23] contrasting the

---

[23] Tribal territory.

liberal approach to resource exploitation with that of *iwi*. In Chapter 5, the philosophy of *kanyini* from the Anangu people of central Australia is used as the counterpoint to individualistic and communitarian based approaches to IJ. The holistic approach to being and the extension of identity beyond human alone frame a discussion of Human Rights (HR) approaches to justice in Chapter 6. It is not until Chapters 7 and 8 the natural union and entanglements are finally returned to harmony as the thesis explores the potentialities with HR and the Capabilities Approach (CA) to respond to the parameters required to decolonise IEJ.

As I seek to explore how and why the Western liberal conceptions of IJ may deny justice to some Indigenous Peoples within liberal settler states, I will look, too, to aspects of Indigenous practices of IJ for insights into how they may be integrated into a more comprehensive approach to IJ in addressing climate change, resource extraction, and environmental degradation. What I am primarily seeking here is to establish the content and context of an IJ that will accommodate the needs of the Indigenous people in the settler states.

The next chapter takes a *critical* look at IJ and EJ, that is it looks at them through a decolonial lens.

Section 2 Framings

Chapter 2: Liberal Approaches to Intergenerational Environmental Justice

> Society is, indeed, a contract. Subordinate contracts for objects of mere occasional interest may be dissolved at pleasure; but the state ought not to be considered as nothing better than a partnership agreement in a trade of pepper and coffee, calico or tobacco, or some other such low concern, to be taken up for a little temporary interest, and to be dissolved by the fancy of the parties. It is to be looked on with other reverence; because it is not a partnership in things subservient only to the gross animal existence of a temporary and perishable nature. It is a partnership in all science, a partnership in all art, a partnership in every virtue and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born.
> Edmund Burke: Reflections on the Revolution in France §327

> … you know, there's no such thing as society. There are individual men and women and there are families. And no government can do anything except through people, and people must look after themselves first. It is our duty to look after ourselves and then, also, to look after our neighbours.
> Margaret Thatcher in an interview in Women's Own in 1987

Unlike Margaret Thatcher (and other adherents of neoliberalism), the enlightenment philosopher Edmund Burke believed in society. He saw it as a serious, ongoing intergenerational project growing from the past, through the present into the future. On his account, society is a partnership between participants dead, living and yet-to-be-born. Without continuity in society, '[m]en would become little better than the flies of the summer' (Burke, nd: §161). Critical to his understanding of trans-generational society is the idea of contract. Including 'all science', 'all art', 'every virtue' and 'all perfection' suggests he sees the intergenerational social contract as iterative. It is a social, cultural and intellectual process in which successive generations partner with those before and to come.

Without putting words in Burke's mouth, it might be possible to imagine he is underscoring the foundations of IJ. If society is a partnership between generations, and if by virtue of social membership we contract obligations and duties of justice to the living, then in the spirit of an iterative and living partnership, so too there can be obligations and duties of justice owed to people past and future. However, the living 'partners' to Burke's philosophy, in modern Western liberal societies, leaders like Thatcher, and political justice theorists, have moved away from his Eurocentric ideal of society, and are struggling to conceptualise and implement intergenerationally just policies and projects. Sadly, it is in rejecting 'a partnership [with] the

gross animal existence of a temporary and perishable nature' (to subvert Burke) we now stare into the face of substantial intergenerational, environmental, and Indigenous injustice.

It is the epistemic foundations of Western IJ and EJ theory this chapter focusses on. Starting with a survey of IJ theory, it proceeds then to EJ, and from there establishes the settler state experience of IEJ for Indigenous People. It critiques theory for its specifically Eurocentric biases, highlighting the injustice to Māori and Aboriginal as a precursor for arguments for decolonising theory.

Intergenerational Justice

> …… to seek a new consensus on global actions to safeguard the future of the planet and the right of future generations everywhere to live healthy and fulfilling lives. This is the great development challenge of the 21st century.
> Helen Clark in the forward to the Human Development Report 2011, (UNDP, 2011: iv)

> ...the profligate generation is making a moral exception of itself, unfairly favoring its own interests over those of others. But when the costs rise to the level of catastrophic evils (such as mass starvation and death), and the benefits are minor (such as bigger cars and cheaper, and more exotic vacations), this becomes an especially serious kind of moral wrong, showing that one group has little or no regard at all for others, and far too much regard for itself.
> (Gardiner, 2011b: 153)

Helen Clark, above, is calling for global efforts to secure future generations' wellbeing on this planet. Hiskes (Hiskes, 2005; 2009) suggests IJ is at the heart of EJ. IJ is at the core of Indigenous Peoples' calls for justice. And yet despite the clamour on behalf of future generations, Steve Gardiner is here suggesting that we the living are the 'profligate generation', consuming the future for trivial pleasures. IJ is the primary concern of this thesis. With these views in mind, this section traverses a number of approaches to IJ theory.

The very long-term concerns of contemporary IJ are fairly new to policymaking, economics, business activities, and international negotiations (Gardiner, 2011b; Garnaut, 2008; 2011; Stern, 2007). There is little lore, tradition, nor a set of norms to hold modern Western law, government, land management practices or business to the global and long-term, to *comprehensive* planetary governance. Most practices focus on the local and present. Society is confronted by the awesome capacity humans have to alter the global biosphere, a global commons, irreversibly (Rockstrom et al., 2009). Divided by and into national/state compartments (Bodansky, 2001; Depledge, 2008), the standard tools for commons management are failing as people attempt to address the challenges of expansive spatial and

very long temporal dimensions (Baer, 2006; Garvey, 2008; Goodin, 1999; Moellendorf, 2009; Singer, 2010). Meanwhile, national leaders privilege short-term national economic interests over long-term global environmental goods (Garnaut, 2008; 2011; Nordhaus, 2008; Stern, 2009a).

Jana Thompson suggests a

> society is intergenerationally just when each generation does its fair share to enable members of succeeding generations, both inside and outside its borders, to satisfy their needs, to avoid serious harm and to have the opportunity to enjoy things of value. (Thompson, 2009: 5)

Thompson's account is expansive. It takes obligations beyond family, Thatcher's neighbourhood, and even national borders. It suggests an infinity of generations and an extensive breadth of protections. Privileging needs both in the present and future, it forgoes mention of wants. Needs are the stuff of justice theories. Needs this definition implies are inviolate. Current generations cannot be expected to deny their needs for future generations. However, this definition also suggests the wants of the living cannot be privileged over future generations' needs. Thompson's definition also protects against serious harm. To privilege the wants of the living over the needs of or harms to future generations would, in Gardiner's word, be 'profligate'.

These are powerful requisites, however, both 'fair share' and 'things of value' are vague. How do we define a fair share? How might it be quantified? We have considerable debate between the living on what is a fair share of social burden—More or fewer taxes? More or less in welfare payments? More or less foreign aid? These are debates in which all protagonists have a voice. How might we determine 'fair share' when one party, the party which stands to bear the greatest burdens, has no voice? Similarly, 'things of value' are disputed between the living. While I value a forest for its peace, another values it for timber and income; you value a reef for photography, a fisher for livelihood. You and I can fight our case; future generations are without representation—we must assume they will value that which we value. But Terence Ball explains even this is far from certain (Ball 2008). Perhaps there are other ways of defining IJ.

Edward Page conceives of IJ as '…concerned with the equitable distribution of benefits and burdens across different generations' (Page, 2007b: 453). Page appears to offer a simpler definition. At first blush, it is less demanding than Thompson's. Page does not force us to consider spatially distance atop of temporal distance as Thompson does. I'm not convinced

he is letting us out of spatial obligations—his statement is unequivocally 'concerned with equitable distribution'. Distribution occurs between things, including across space and time—has he encompassed our spatial obligations within the noun 'distribution'? Page expands our understanding of the requirements of IJ to include specifically 'benefits and burdens'. It is not on his account acceptable for one generation to reap benefits which will leave future generations with burdens. Benefits and burdens must be equally shared across generations. If I reap a benefit in Australia but the burden will be felt by future generations in Indonesia or Sub-Saharan Africa, then under this definition I have perpetrated a harm on those temporally and spatially distant others: and as such my transgression is accounted for within Page's definition.

Page has specifically avoided including contestable valuables. He has not identified a privileging of current need. However, both are implied in 'benefits and burdens'. Satisfying needs and enjoyment of 'things of value' are 'benefits' and to be denied either a 'burden'.

It is possible under Page's definition to argue that since historically each generation has been better off technologically and economically than those before, that this increase in wealth and where-with-all automatically benefits future generations.[24] However, the current and perspective scale of environmental change and harms makes this argument hard to support. Wealth and technology are unlikely to afford sufficient protection for conditions of equity to apply. It is insufficient argument to discount the definition.

While Page offers us a 'simple' definition and Thompson a more comprehensive one, on both accounts living persons have duties and obligations to future generations to; bequeath an environment which can satisfy their needs, do them no harm, and allow for some minima of wellbeing. There are difficulties though with deciding fair distribution, particularly when future people can pass no specific benefits to the living. On both these definitions, the justice is directly accorded a collective—future generations—by a collective—current generations. But this is problematic for liberal individualists. And just who are these future persons anyway? Given social change and 'progress', how can we ascertain what future people will value?

---

[24]   This is the argument of economists particularly, and is instrumentalised by applying a discount on the claims future generations have on the living (Nordhaus, 2008; Stern, 2007).

Contract-Base IJ

Contractarians argue while current generations have the power to heap benefits (and burdens) on future generations, future generations are unable to 'repay' or reciprocate to current generations (Weston, 2012). The burdens might be shared, but not benefits. To give up a possible benefit in the present for the future pleasure of an unidentifiable future other, a future other who may not exist if we act thus seems to such theorists unjust (Parfit, 1984). In this section, I will review some of the implications of this impasse.

Under both Thompson's and Page's definitions the living should be acting to curb major threats to coming generations. And this seems well accepted by many on an intuitive level, as they campaign and advocate for curbed destruction and comprehensive environmental protections. Yet many in government and the community are unwilling to 'do their fair share' as Thompson would have it. Stephen Gardiner describes IJ as a component of the 'perfect moral storm' we face as we attempt to deal with climate change (Gardiner, 2004; 2009; 2011b).

John Rawls suggested, 'the question of justice between generations […] subjects any ethical theory to severe if not impossible tests' (Rawls, 2009: 251). Contractarian justice is based in contract—albeit at times implicit—between individual people. The living, 'put aside in each period of time a suitable amount of real capital accumulation' (ibid: 252) for future generations. He suggests 'the contract doctrine looks at the problem from the standpoint of the original position and requires the parties to adopt an appropriate savings principle' (ibid: 253). However, he concludes, even if IJ dictates each generation inherits from previous generations, and in turn saves for future ones,

> [t]here is no way for later generations to help the situation of the least fortunate earlier generation. Thus the difference principle does not hold for the question of justice between generations and the problem of saving must be treated in some other manner (ibid: 254).

The calculation of IJ is based, he suggests, in a transgenerational project, in which we imagine what is fair to contribute forward based in what we (ideally) received from past generations. The contract between generations is unusually structured: future generations can make (hypothetical) contractual claims on current generations based in the (idealised) contractual claims the living made on past generations. That is, he suggests, '[t]he life of a people is conceived as a scheme of cooperation spread out in historical time. It is to be governed by the same conception of justice that regulates the cooperation of contemporaries'

(ibid: 257). The duties and obligations of different generations to each other are similar to those of contemporaries based in virtual contractual arrangements.

This chapter opened with Burke's vision of an intergenerational society. And Rawls argues similarly, that we have obligations to ensure sufficient resources are available for future generations to maintain social and cultural gains. Avner de Shalit (de-Shalit, 1995) also suggests IJ is rooted in the persistence of community, and that we have responsibilities to future generations as members of an organic flow of social continuity. Rather than a social contract between individuals, IJ is generated from communities of people—the unit of justice is not the individual but rather the community. Within just intergenerational communities individual needs can be sustained. While mutations, progressions, and change are a feature of communities, the sense of society itself is sustained he says. The projects of the living continue at least into the near future, where we hope they will be picked up and continued by the generations who outlive us. There are connections. And with those connections come obligations and duties, he argues, for the living to ensure there are sufficient resources for future generations' wellbeing. IJ on de Shalit's account is not an individual but a communitarian project.

Other contractarians argue that justice between generations is rendered impossible, as current generations can receive no reciprocal benefits from future generations. While Thompson, Page, Rawls and de Shalit may argue that we owe future generations fair and equitable treatment there are others for whom IJ is itself, while intuitively reasonable, a philosophically flawed concept (Ball, 1985; 2008; Weston, 2012). For Derek Parfit, the unit of justice is the individual. While acknowledging that moral relevance does not diminish with time, he claims we encounter a significant obstacle in arguing for IJ because justice is relevant only to persons, humans must have identity to qualify as persons, and future persons are yet to have such an identity. He calls this the 'non-identity problem' (Parfit, 1984) and argues that how we act now (what we do, who lives, who does not, where populations settle, etc.) in relation to IJ or not, will alter the identities of future persons.[25] Thus, as the persons who will comprise future generations have no identity, and we, the living, cannot have any duties or obligations to non-identities, there can be no IJ.

---

[25] Chapter 6 examines another problem with Parfit's ability to conceptualise IJ, that is his understanding of time.

Terrance Ball argues that we cannot know what will be perceived as just by future generations since justice is a highly mutable concept (Ball, 2008). Each moral community, he suggests, particularly those separated by time, understands justice differently. For instance, to a slave owner of the antebellum south, to abolish slavery was to unset the natural order and to act unjustly towards future generations. Therefore, the very notion of IJ is, he says, incoherent. It is impossible on this account to be intergenerational just as we cannot know what will be of value to future generations.

While expansive definitions of IJ are 'incoherent' to Ball, he does not reject the need for IJ (and nor does Parfit). Ball states unequivocally;

> …[n]o single generation may, morally speaking, act as it pleases and without regard to the welfare of future generations, simply because it does not constitute the whole of a temporally extended (though historically 'local') moral community. (Ball, 2008: 334)

The proviso is that we are ill-equipped to conceive or implement a justice framework that can create a coherent definition. Justice (and political practices) he argues have temporally mutable meanings, and given there is no trans-historical meaning for justice, there can be no valid theory of IJ. It is on his account not possible for current generations to act justly towards future generations as they cannot know what future generations will regard as just when human accounts of justice change over time. How can we, he asks, predict what future generations will perceive as their needs? What things will they value as enjoyable? This is knowledge we cannot have beforehand. And without this knowledge, Ball argues, we cannot define IJ, we are stuck with terminological incoherence.

Ball bases much of his argument in the dynamics of social constructions of the concept of justice. What may appear just at one juncture, will seem unjust at another. So while Rawls calls for IJ to ensure future generations can 'preserve and maintain social, political and cultural gains' (Watene, 2013: 23), Ball suggests the social and cultural fabric is too ephemeral to contain a coherent theory of IJ.

We are left here with a theory from Parfit claiming there can be no valid subjects of IJ and with Ball saying the essence and values of the community are so mutable there can be no clearly valid theories of justice that will work for the future. The subjects of justice, the identifiable individual for Parfit, and the individual constructed within unknown social values for Ball are beyond IJ theorising.

Human rights based IJ

> ...security of the person has been firmly entrenched in human rights law at least since the promulgation of the Universal Declaration of Human rights. There is a strong argument that security of the person includes both physical and psychological integrity, either one of which may be undermined by environmental degradation.
> (Collins, 2013: 80)

Established as universal and widely accepted internationally, HR would appear to give advocates of IJ a strong avenue for representing the needs of future generations. HR declarations and covenants identify unequivocally that people have rights to life, security, adequate health and wellbeing and to the protections that will ensure those rights (United Nations, 2015). Caney argues that human rights transcend time; that is, they apply to living and future humans. The right precedes identity thus avoiding the issues of non-identity, incoherence, and non-reciprocity (Caney, 2010a). Position in time, he argues, does not diminish duty and obligation to HR. Acknowledging an agent has a right, by definition, assigns an obligation on all other agents to ensure the right is realised. That being the case, on Caney's account, each member of the current generation is duty bound to uphold and protect the HR of future generations and is obligated to act in ways which do not jeopardises those rights. This does appear to provide a promising way forward for IJ.

Collins describes 'security of person' as a fundamental and widely accepted right, both in terms of the Universal Declaration of Human Rights (UDHR) and as interpreted in some law (Collins, 2013). It is her contention that key elements of a person's security can be undermined where there is a destabilisation of either or both their 'physical or psychological integrity' (ibid: 80). This sort of destabilisation is possible where there is 'environmental degradation' (ibid). Climate change and environmental degradation are predicted to undermine the physical security of millions of people (International Organisation for Migration, 2009; Nations, 1992) and Indigenous Peoples in particular (United Nations Development Group, 2009). The simple threat of cataclysmic events, the events themselves and aftermath dislocations of such events, can quite reasonably be expected to significantly undermine psychological wellbeing. On Collins' account of HR, therefore, we could argue there is an obligation to minimise potential harms of such events to both current and future people.

The UNDHR is individualistic, property based and grants the environment instrumental value only. Like Caney and Collins, Richard Hiskes turns HR theory to protect both future generations (Hiskes, 2005; 2009). He asks in a manner similar to Breena Holland's

interrogation of CA (Holland, 2008b) why the environment is not regarded as a primary good within HR.

Hiskes suggests we must,

> recogniz[e] the reality of modern risks as emergent collective phenomena—and particularly those represented by environmental hazards—[and this] only intensifies the need for individual rights to protect citizens from them. Any theory of justice therefore must be careful to include environmental risks as a major element of distribution and participation. Not to do so threatens to make the whole project of a theory of justice irrelevant to an age characterized by pressing environmental concerns that confront all communities around the globe. (Hiskes, 2009: 20-21)

On this account, it is impossible for individuals to confront emergent environmental issues alone. With a collective lens, which closely regards emergent qualities and unpredictable outcomes, we may be able to fashion solutions. Within his work, there are strong echoes of Indigenous ontology. He draws on three main claims to establish the emergent nature of rights: human identity is relational, contemporary society (and political reality) face real and urgent emergent risks, and ecology teaches us of the inextricable interconnectedness of earth systems which human technology and rapaciousness alter. There is, he claims, a duty to protect (emergent) rights to clean air, water, and soil now and into the future. What he establishes is that HR is dynamic: it must (and can) be adapted to fit emergent phenomena.

Responsibility for climate change and environmental degradation cannot be sheeted home to the individual—as Walter Sinnott-Armstrong agues so convincingly in *It's Not My Fault* (Sinnott-Armstrong, 2010). An individual's contribution is generally insignificant and it is not possible to prove a harm is the result of an individual's action—IJ issues are generally problems created by the collective actions of many. There are weak causal links between acts and harms. Hiskes suggests we need to seek moral accountability in a foundation other than the individual. And to protect future generations he suggest we need to assign collective responsibility to the living 'for harms associated with their behaviour' (Hiskes, 2005: 44).

To account for IJ Hiskes turns to 'reflexive reciprocity' sited in the community of past, living and future generations. He bases this reflexive reciprocity in the force of our communities—emphasising the deep well of connection that exists within the concept of our community, that continuum that includes our ancestors, peers, and progeny. 'Reciprocity is', he claims,

> a relational concept and moral sentiment denoting more than merely entering into contracts to further self-interest, but less, from a moral point of view, than selfless generosity or the giving of gifts. It is a relationship among individual people in a spirit if shared community defined by more than just economic self-interests; as such … it is

> conceivable that reciprocity can exist between present and future generations of
> community members. (Hiskes, 2009: 51)

Although individually based, this distinctly social and communal reflexive reciprocity enables future generations to give back to the living in that protections of the environment for the future can be understood as also beneficial now.

Capabilities Approach based IJ

> If we want to sustain the freedom of future generations to live the way they like and to what they have reason to value (no matter whether this corresponds to their own conception of their 'needs', not to mention our conception of their 'needs'), then we should choose a freedom-based view of sustainable development.
> (Sen, 2013: 9-10)

The CA to justice developed by Amartya Sen and Martha Nussbaum like the HR approach, is philosophically promising in formulating a convincing account of IJ (Holland, 2008b; Nussbaum, 2007; 2011; Page, 2007b; Schlosberg, 2012a; 2014; Sen, 2009). Both Sen and Nussbaum are focussed on creating environments (in the broadest sense of the word) which provide at least the minimum conditions for human expression of potential. For Sen, this is having the freedoms to achieve things people value; for Nussbaum to have the capabilities to do so. And as quoted above, Sen, at least, sees freedoms and CA as a way to rise above Ball's obstacle of the unknown wants and concepts of justice which will be held by future generations.

To fulfil our obligations to justice, on Sen's account we need to ensure we do not forcibly limit future generations' capability enabling freedoms (Sen, 2013). It is conceivable, indeed likely, that climate change and environmental destruction will deny future generations their core capabilities. Sen suggests we 'need a broad-based programme [of sustainability] that is freedom-oriented not just in the sense of being protective of liberty, but also in the sense of providing social support for crucial freedoms that people have reason to value' (ibid: 10). This is important he says, as freedoms distinguish humans from mere animals—lifting humans above the (mindless) need-seeking behaviours of animals.[26] 'The overall effect is to integrate the idea of sustainability with the perspective of freedom so that we see human beings not merely as creatures who have needs but primarily as people whose freedoms really matter' (ibid: 12).

---

[26] Here we encounter in Sen the preferencing of human above nonhuman that the race theorists are so critical of when the same ideas are used to separate human into categories of more or less human, more or less animal.

Importantly from Sen's account, we gather there is a possible means of reconciling current generations with future generations. 'With [a] freedom-oriented modification [to concepts and practices of sustainability] we can see 'sustainable development' as development that prompts the capabilities of present people without compromising capabilities of future generations' (ibid: 11). This repeats Hiskes' formulation of reflexive reciprocity. In considering future generations, we simultaneously enhance the freedoms, capabilities, and rights of the living. However, like previous theorists discussed here, Sen's focus is resolutely individualistic and anthropocentric in its formulation.

He does, unlike our previous theorists, suggest that property rights may be an impediment to sustainability and thus to at least some aspects of IJ. This is important as we consider reconceptualising IJ. Individual property rights to resources (animal, vegetable, and mineral) over-ride community rights: they give the 'owner' determination over how they are preserved or despoiled, conserved or collateralised. As the global community considers capping carbon emissions through the facility of forms of emissions trading schemes they are in effect granting ownership of the atmosphere, until now a global common. It is Sen's position that this is destructive of social harmony. Limiting the combined environmental harms we bequeath future generations requires cooperative behaviour (which is dependent on social harmony). In Sen's assessment 'attention must be paid to the interdependencies involved' (ibid: 18) if future generations' freedoms are to be protected. On some Indigenous accounts, these interdependencies will include all sentient and non-sentient life, and the geosphere—not just the primarily human interdependencies to which Sen refers.

Nussbaum, unlike Sen, extends consideration of justice to some sentient animals.

> One might have a theory that held that many living beings, human and even nonhuman, are primary subjects of justice … if one starts from the idea that many different types of lives have dignity and are worthy of respect (Nussbaum, 2007: 17).

So while she reverts to the sufficiency of Rawls' account of IJ (ibid: 21, 23, 33-34 and see Watene, 2013) she creates a space for imagining norms which would give us cause to consider not only humans but also some other sentient life as deserved of justice (Nussbaum, 2007; Schlosberg, 2012a; 2014). Three CA theorists offer a way to embrace the environment more intimately, and therefore possibly a new and more holistic conception of IJ.

Breena Holland argues that the natural environment is of 'instrumental value to human capabilities' (Holland, 2008b: 320) and as such certain basic environmental conditions are necessary before all other human capabilities are satisfied. Maintaining an environment that in turn sustains capabilities could, indeed should, be viewed a 'meta-capability' (ibid).

Holland's 'meta-capability' does direct CA towards the future, whether deliberately or reflexively (as per Hiskes), protecting the environment for the living will too protect it, at least in some measure, for the future. If human life is dependent on nature for sustenance, as it is, and human capabilities can only be fulfilled if certain critical levels of natural 'goods' are available to maintain that life, it would appear unjust to limit future persons' capabilities by degrading that same life-sustaining nature. It is her contention that the environment must be the foremost of capabilities: the capability upon which all others are contingent, the meta-capability. As a meta-capability, it is the one that must be protected, preserved, and maintained before advancing Nussbaum's ten capabilities (see Nussbaum, 2007: 76-8). In so doing, she may account (reflexively) for at least the most basic of environmental needs of future generations.

Although protecting the environment as a meta-capability for the living might protect future generations it is not the specific focus of Holland's expansion. And like HR theory, this conception is individualistic, property based and grants the environment instrumental value only.

Schlosberg (Schlosberg, 2012a; 2012b; 2014) builds a bridge specifically applying justice as capabilities to communities qua communities (not individuals), and 'beyond its reference to humans alone, … into a consideration of the capabilities necessary for the non-human natural world to function' (2012b: 174). By replacing 'dignity' as the signifier of justice, with 'integrity' and embracing community as a unit of justice he imagines capabilities theory expanding into an encompassing and holistic realm. He recognises the possibility of people's primary identity emanating from their group/tribe/community affiliation rather than resting solely in atomised individual islands of human flesh; and he is also more holistic expanding the horizon to 'larger natural systems' (ibid: 175).

Without a healthy, flourishing (non-sentient) environment, it is impossible to fully realise the capabilities of the sentient. Flourishing then is an entangled capability dependent on the integrity of the whole and component parts. Where that integrity is compromised so too the

capabilities of ecosystems and dependent life (ibid). By extension, if we preserve the integrity of the natural environment, we will have supported too opportunities for future generations to realise their capabilities or at least more of their capabilities than if we had not. At best we will enable them to flourish. If instead it is ignored, ongoing climate changes and environmental degradation will (severely) restrict the potential for that capability realisation.

Katy Fulfer argues we can encompass eco-systems within the capabilities framework (Fulfer, 2013). We need principles of justice for the non-sentient, says Fuller, explicitly because our interests inevitably conflict with the non-sentient. She proposes that following Nussbaum's expansion of her capabilities approach to encompass nonhuman sentient animals (Nussbaum, 2007), it is conceivable to similarly expand the theory to non-sentient ecosystems (Fulfer, 2013).

Fulfer examines the measures of non-sentient life's 'flourishing' within the context of eco-systems. She is not suggesting a subjectification of individual species, geologies or geological features, but rather she takes it as incumbent upon us to ensure ecosystems are enabled to flourish (ibid). Uncontroversially, it is clear that with too little water, a plant wilts and dies. If enough plants die not only may the species be lost (the antithesis of flourishing), the soil on which they grew then becomes more vulnerable to erosion and so forth. We can base justice to the non-sentient in the flourishing of an ecosystem—a river can be seen to flourish, or not, on the basis of the ecosystem's health, a tree likewise (ibid).

Her view is non-instrumental and specifically anti-positivist: the value in flourishing is not related back to human wellbeing nor to economic environmental value. She suggests the good, the justice, rests in the ability of the non-sentient system's dignity and on-going performance of function. Those functions may vary over time with natural variation without incurring an injustice. However anthropic intervention that alters the system's flourishing may be seen as limiting fulfilment of capabilities and as injustice.

Fulfer is not addressing IJ directly: she is, however, articulating a conception of non-sentient 'rights' which sits closer than others discussed here with the continuum of the holistic worldview of the Australian Aboriginal, Aotearoa Māori, and other Indigenous Peoples. At odds with some in these communities she places no intrinsic value in geomorphology, geology, and other forms of mineral 'being' and specifically eschews the spiritual.

Watene, writing specifically on the accommodation of IJ within Martha Nussbaum's variant of CA, suggests on the other hand that 'future generations place pressure on fundamental elements in Nussbaum's capability theory' (Watene, 2013: 21). As noted earlier, Nussbaum herself underplays IJ, by reverting to Rawls (Nussbaum, 2007; Watene, 2013). But Rawls did not fully resolve IJ himself (Hiskes, 2005; 2009; Watene, 2013).[27] Watene argues that it is unclear whether Nussbaum can accommodate IJ (Watene, 2013). If the ability to access Nussbaum's capabilities is the foundation of justice, it does not seem an unreasonable proposition to posit people of the future will be denied justice if they cannot. There exists a tension, a tension we see played out particularly with reference to climate change, resource extraction, and environmental degradation, between fulfilling capabilities now and providing sufficient 'space' for future generations to realise theirs.

Sen is clear on his conception at least justice requires that current generations do not limit future generations freedom to realise their capabilities. Nussbaum acknowledges her list of capabilities is incomplete and has invited further discussion by stating '[t]he list is itself open-ended … no doubt it will undergo further modification in the light of criticism' (Nussbaum, 2007: 76). Holland, Schlosberg, and Fulfer demonstrate that it may be possible to 'stretch' the theory to include the environment and non-sentient life, and whilst in Holland's view the environment matters not in and of itself, it is of value only on its instrumental good to human, Fulfer leads us towards a more holistic expansion of Nussbaum. Schlosberg expands capabilities into the realms of other sentient life and beyond individualism to community.

Is it here the foundations of weaving in some Indigenous holistic, communitarian and non-material philosophies lies and thence to a more comprehensive and inclusive conception of IJ?

---

[27] On Charles Mills account Rawls is also problematic as behind the 'veil of ignorance' everyone is white. That is, Rawls fails to specify that when behind the veil there is a possibility the thinker will emerge as a person of colour (Mills, 2017: particularly 87-88).

Environmental Justice

Theories of EJ have grown from liberal theories of justice—that is EJ is an issue to which existing justice theory has been applied—since it was first enunciated by Robert Bullard in 1983 (Mohai, Pellow, & Roberts, 2009). It's a youthful branch of theory because, firstly, those most affected have been the 'invisible' minorities subject to 'white ignorance' (Mills, 2007), and animalisation (Mills, 2017; Pellow, 2016), and, secondly, because damages to the environment have escalated in size, impact, frequency and temporal reach with industrialisation and population growth (Caney, 2005; Gardiner, 2011b; Jamieson, 2010; Shue, 2010). 'Environmentalism' has a longer history. It both tended and, indeed continues to, focus on the natural environment, species and extinction, and eschew (at times even demonises) the cultural environment (Purdy, 2015).[28] EJ lassos the natural environment, cultural environment, and people and bundles them with social justice (Mohai, Pellow, & Roberts, 2009; Schlosberg, 1999; 2009; 2013).

Environmental harms; toxins, wastes, scarred and degraded landscapes, and vulnerability to natural hazards, are distributed unevenly across the landscape. Their occurrence coincides disproportionately with settlements of poverty, racial and cultural minorities (Gonzalez, 2017; Mohai, Pellow, & Roberts, 2009). EJ is concerned with natural and cultural environments: with 'the environmental conditions in which people are immersed in their everyday lives' (Schlosberg, 2013: 39). An integral component of the cultural environment is embedded and (sometimes) invisible racism. The EJ discourse is then intimately entwined with black (American) and Indigenous rights, and has brought together, in the USA, these previously disparate urban (Black) and rural (Indigenous) forces (Schlosberg, 1999).

At least to some measure, EJ has accepted and adopted an (Indigenous) holistic worldview—a view of 'the environment' not as 'other', not the 'great wild out-there', but rather as co-generated with human. The globe is 'Mother Earth', life forms are subjects of Mother Earth with entitlements of (species-specific) dignity, not objects awaiting human subjugation. There is within EJ a deep understanding of and commitment to an integrative whole (Schlosberg, 2013).

EJ was conceived, to some extent concurrently, within the crucible of critical race theory, race politics, and racial injustices. As laws tightened to protect disadvantaged communities in the

---

[28] Hence the term 'greenie'.

West—particularly in the USA—Western nations sought to 'outsource' their toxic wastes to poor countries and the reach moved into the realms of global justice (Mohai, Pellow, & Roberts, 2009).[29] Likewise, with rising concerns about climate change and such practices as fracking, the urban rich and farmers are also identifying as burden bearers at the behest of corporate (and political) greed and gain. Every dimension of conceptualisations of environmental justice has expanded to respond to pervasive threats to human-embedded habitat (Mohai, Pellow, & Roberts, 2009).

EJ theorists include IJ issues within their framework, particularly as the temporal reach of environmental injustices expands. Central to IEJ are the projected burdens of anthropogenic climate change, but it also includes such issues as nuclear waste and other long-lived toxin management. Richard Hiskes suggests IJ is at the root of all environmentalism, that is all calls to protect the natural environment (Hiskes, 2009). This seems to be rather too great a stretch for EJ given many calls are rallies for immediate redress or protection for the living. There is no doubt, though, that there is a conjoining of the two justices. Protecting the living can benefit future generations and, reciprocally, protecting the environment for future generations can have immediate benefits.

Just and ethical environmental governance requires eliminating bias in the spread of environmental benefits and burdens across the community: ensuring all have adequate access to positive environmental services, natural and cultural, and none are unduly overburdened with damages and costs. IJ requires that future generations inherit at least the same quantum of goods as current generations inherited. Combined, as IEJ, the challenge is to ensure no community is unfairly burdened with environmental costs, and all share equally in environmental benefits now and into the far future. Entering this discourse is a thread of understanding long associated with Indigenous communities, and disparaged by Western liberal ideology: human is immersed in natural, there are no artificial barriers between people and the environment (Holland, 2008a; Fulfer, 2013; Pellow, 2016; Schlosberg, 2012b; 2014). The argument is that human cannot insulate from natural, but rather, is totally reliant on environmental flourishing for the support of human dignity.

---

[29] This is not to suggest that such communities are fully protected at this time. The disadvantaged remain not only economically disadvantaged, but also the environmentally disadvantaged. The ongoing prognosis, which this thesis seeks to address in some measure, is the prospect of greater environmental disadvantage for such communities as the impacts of anthropogenic climate change take grip around the globe.

Recently David Pellow has advocated for the development of critical studies of EJ (Pellow, 2016). In doing so, like Schlosberg and Fulfer before, he is suggesting that species beyond human must be included in EJ, Specifically, he observes,

> …the key social category species remains, at best, at the margins of the field of EJ Studies, despite the fact that, generally, when and where humans suffer from environmental inequalities, so does the more-than-human world (and vice versa) and often as a result of ideological frameworks that link marginalized humans to "nature". My point here is that since multiple forms of inequality drive and characterize the experience of environmental injustice, the field would do well to expand in that direction. (ibid: 223)

Pellow, like Mills, points to the ways in which current theory based in liberal traditions fails to attend to 'multiple social categories of difference' and the ways they are 'entangled in the production of environmental injustice, from race, gender, sexuality, ability, and class to species (Pellow, 2016: 223-4). The root of multiple environmental injustices stems from the unequal attention given human and nonhuman (ibid), and the West's self-appointment as the crucible of superior thought, politics and philosophy (Alfred, 1999; Coulthard, 2014; Mills, 2017; Moreton-Robinson, 2015; Stewart-Harawira, 2005; Watson, 2015).

There is no post-colonial stasis for Indigenous People. Colonisation continues in the form of environmental harms, and displacement (Gonzalez, 2017; Whyte, 2013; 2017). Gonzalez claims Native Americans are the subjects of more than their fair share of environmental harms, particularly from extractive industries (Gonzalez, 2017). Importantly here, this is not simply nor only a historical experience. Extractive industries continue to wring a disproportionate toll from Indigenous communities globally—this generates at least two sorts of harms. Firstly, laws allowing extraction are the laws imported by the settlers, they not the laws of the Indigenous Peoples themselves. What is right and lawful environmental interaction for the Indigenous Peoples carries no or little weight within the halls of power within the settler states. Indigenous Peoples, having been herded to the edges of the new nation states, physically and metaphorically, and their agency in the ongoing protection of their residual pockets of territory is constantly undermined by the state and legal systems. The second harm arises from the construction of EJ theories from within the same dominant paradigm and discourse as the law. As discussed in the previous chapter the foundations of that philosophy and law are in many fundamental respects incompatible with the Indigenous approaches. EJ for Indigenous Peoples can only provide justice if the foundational principles agree with Indigenous epistemologies and ontologies (Dodson, 1997; Durie, 1998; Mikaere, 2005; Pearson, 1997; Watson, 2015; Whyte, 2015). It must recognise the entangled

complexities of land rights, self-determination, sovereignty, treaties, and identity. As Gonzalez argues in the USA '[e]nvironmental justice in the tribal context is inextricably linked with the struggle for self-determination, tribal sovereignty, and the right to be consulted about activities outside Indian reservations that may affect Native lands and resources' (Gonzalez, 2017: 283) so too could be argued in the other settler states.

Discussion

> The crucial common claim—whether bounded in terms of class ideology, or androcentrism, or white normatively—is that all theorizing, both moral and non-moral, takes place in an intellectual realm dominated by concepts, assumptions, norms, values, and framing perspectives that reflect the experience and group interest of the privileged group (whether the bourgeoisie, or men, or whites). So a simple empiricism will not work as a cognitive strategy; one has to be self-conscious about the concepts that "spontaneously" occur to one, since many of these concepts will not arise naturally but as the result of social structures and hegemonic ideational patterns. In particular, it will often be the case that dominant concepts will obscure certain crucial realities, blocking them from sight or naturalizing them, while, on the other hand, concepts necessary for accurately mapping these realities will be absent. Whether in terms of concepts of the self, or of humans in general, or in the cartography of the social, it will be necessary to scrutinize the dominant conceptual tools and the way the boundaries are drawn.
> (Mills, 2017: 82-83)

Charles Mills reminds us *your* certainties may not be *my* certainties. This suggests it may be unwise for liberal justice theories to make universalist claims (Mills, 2017). Especially if it is possible that embedded within the theories are colonial racism, cultural hegemony, and epistemological ignorance. However, theorists appear to assume rationalist foundations, built iteratively from European roots, are the appropriate base on which to develop theories of IEJ. They assume certainties positioned predominantly within the left-hand column of Fig 1.1 (page 20)—material, quantified, and monetised property, individualism, anthropocentrism and discontinuous forward-projecting conceptions of time. Understanding how these certainties impinge on Indigenous Peoples' lives is the purpose of the following chapters. However, it is not only Indigenous Peoples' lives on which they impinge: they limit the capacity of liberal theory to develop effective principles of IEJ.

Indigenous Peoples have living, evolving, dynamic cultures that sustain them, and which they intend will endure to sustain future generations. The endurance, and wellbeing of the cultures and people, as the following chapters will show, are entangled with the environment. Justice is IJ is EJ and EJ is IJ is justice. However, for Indigenous Peoples to secure IEJ it must be on their own terms, within their own realities. That is, the theory needs to be based in the 'concepts necessary for accurately mapping these realities' (Mills, 2017: 83). Unless we

ensure there are no conceptual biases concealing and trivialising the obligations and duties the Indigenous Peoples of the settler states maintain to the environment and future generations, theories of IEJ continue to oppress. It is insufficient to assume that concepts such as property, individualism, anthropocentrism, forward projecting time and dignity are universally accepted and suitable bases of ideal theory.

Including dignity in that list may be somewhat surprising. However, while a shared understanding of and commitment to human dignity as a foundation for justice may seem uncontroversial, it may be contentious. How dignity is conceptualised by the theorist may be an impediment to both IEJ and Indigenous dignity. Where dignity is narrowly interpreted to mean the dignity of the individual human entitled to exclusive property rights that diminish community and the long term it is problematic. None of this need suggest or assert that property ownership, individualism, anthropocentrism, or temporality are in themselves wrong or unsuitable bases for IEJ, but rather that they may be *incomplete* for both future generations within the liberal tradition, and the inheritors of some Indigenous cultures and traditions. They may form a satisfactory account for justice between the living within one cultural tradition, but they are at best an inchoate account between generations and/or for other cultural traditions. As the case studies in the following chapters show we need to fill out the Western foundations of IEJ (and even more provocatively, all justices) to implement intergenerationally just regimes both within the West and for some intra-national and international policies, agreements and conventions.

Some conceptualisations of dignity limit justice's flexibility, binding it inextricably to an anthropocentric warp.[30] In denying intrinsic worth to non-human, human dignity warps epistemology from reality and denies mankind's place as one of many interleaving parts of a dynamic biosphere. A justice based in living-human dignity prejudices future generations and privileges the present. Property-based justice limit perception of value, and make demands on other while minimising the responsibilities of 'owners' to protect and preserve, to nourish and nurture. An intrinsic human dignity is short-lived, lasting a single lifetime; status based dignity is inherently selective: each conceptualisation attempting to validate human exceptionalism, to move human into a realm of dominance, reinforces ignorance. It denies the tight interweave of human and other, community and individual, intrinsic value and economic value, loops of time and place and space. Human dignity, far from a rock-solid

---

[30] There are many conceptualisations. Doris Schroeder identifies 'five and still counting'(Schroeder, 2010)! In Chapter 8 we will explore more.

basis upon which to establish justice theory, is a construct of the sort Mills is warning against above.

These binaries artificially separate human, creating an epistemological illusion of aloof self-sufficiency, an anthropocentric ignorance of people in space through time. If we imagine an IJ free of these binaries, in which we recognise the co-constitutive relationships of dependency (de-Shalit, 1995) in which the warp of the cloth of justice is all nature we create a justice antithetical to Western conceptualisations but essential for a robust IEJ. Nussbaum, Fulfer, and Schlosberg each navigate CA beyond the anthropocentric. de Shalit, Fulfer, Hiskes and Schlosberg each expand justice to community. They all acknowledge the intrinsic value of environment to future generations—upturning exclusive ownership rights to destructive acts. De Shalit and Hiskes suggest that the reflexive benefits in the present of environmental action for future generations expands IEJ's temporal reach.

The demand of IEJ for Indigenous Peoples requires a recognition of the intricate, explicit interweave of place and culture. Indigenous dignity can only be upheld if place is preserved. It is possible that with the imagining of a place embedded community harmonised with intrinsic respect of other, in a long continuum stretching simultaneously from the past, through the present, and into the future, the very need for IJ becomes redundant.

Chapter 3: The Settler State, Recognition & Power

It would be an act of imagining dystopia for our ancestors to consider the erasures we live through today, in which some Anishinaabek are finding it harder to obtain supplies of birch bark, or seeing algal blooms add to factors threatening whitefish populations, or fighting to ensure the legality in the eyes of the industrial settler state of protecting wild rice for harvest. Yet we do not give up by dwelling in a nostalgic past even though we live in our ancestors' dystopia.
Whyte 2017: 208

…Because that transacting of land didn't really make sense, even to my great grandfather who died in 1969. He didn't understand: "Why is my road getting bigger in front of my house?" He thought the state highway was his. No one spoke to him, no one came to speak to him about widening the road or tarring the road, it just became something that happened. "Well wait what's going on?" And it was my grandmother who had to, he was saying "…you have to learn English really well so you can tell me what they are doing, because I have no idea what they are doing." So you need to teach me to speak English in the 1920's because I have no idea what they are doing. So the over time he watched the erosion of his *mana*, because people were encroaching, Ministry of Works were encroaching on Māori land. And that is just one tiny example. This was going on all over the country.
Int. HS.

I was raised from the volcanic soils of Taranaki—both *maunga*[31] and province—in a household made up of my father, his mother, his younger sister and me—three generations under one roof. The three adults grew things—pretty flowering plants, fruit—seven fruit ripe year round—and all our vegetables. They taught me the English, Latin and Māori names for the plants as we fossicked and weeded, dug and harvested. My father skin-dived and fished, *kai moana* was a staple: *paua* (abalone), *tuatua*, rock oysters, mussels, crayfish, snapper, *tarakihi*, john dory, smoked sword fish, and my favourite, the delicate *inanga* (whitebait) in season. My uncle grew dairy cows and pigs: so clotted cream, pork, ham and bacon were staples too. We were at the beach, or on the slopes of the mountain each weekend—we four and my aunties, uncles and cousins. It was an outdoor sort of childhood. A childhood nestled in trees, filled with the smells of moss and leaf litter, of pounding surf and salt spray, of swimming and diving, drift-wood fires and fascinating rock pools, mountainous sand-hills, bouldering, potholing, tramping, climbing, and semi-controlled ski runs. *Caring* for land, water and seas were inimitable to this life. Taking no more than needed meant we could return year after year safe in knowing the earth, waters and seas could provide. So much so that it was

---

[31] Mountain.

not until I was had left home for university in far-off Wellington, that my father entered for the first time, in his words, 'that new-fangled place called a supermarket'.

When parliament was sitting, I would return from school to find my grandmother, not in her beloved garden, but glued to the radio, more often than not in incensed displeasure, listening to "those men" debating. And I listened with her. I remember little of the details of their debates, but I did form the impression they were working for society. Social cohesion, security for all, and some sense of fairness and future underpinned those debates.

The point is politics was as concerned with the social as the economic. Politicians understood themselves to have a role in moulding *society*. And while the system safeguarded four electorates specifically for Māori members of parliament, that vision of society was Eurocentric. Free education for all meant a Eurocentric education for Māori. The Māori Land Court continued to alienate what lands remained in Māori ownership. The mighty Waikato River, the sacred *awa* of many *hapu* and *iwi* was, during those years, dammed repeatedly along its path for hydro-electric power generation and the headwaters of the Whanganui diverted for the same ends. *Te Reo*[32] was forbidden in schools, *taonga*[33] stolen, the sacred desecrated—like the North American Anishinaabek above, Māori, such as Huhana Smith's grandfather, found themselves in a bewildering dystopia. Contrary to Margaret Thatcher's claim, 'society' existed. In Aotearoa, two societies existed—the dominating Eurocentric and the indefatigable, enduring Māori.

It is to lived contexts that justice theories address themselves, even if ideally. Since my childhood, things have changed, things have stayed the same. 'Most' Aotearoa's lowland rivers are now so polluted by industrial dairy farming they are un-swimmable (Joy, 2017). Industrial-scale fishing operations—some Māori owned—must be constantly monitored and regulated to maintain stocks (Ministry for Primary Industries, 2017). Oil and gas exploration expands onshore and off (Freyberg, E; 2017). Species extinctions are constantly prefigured (Endangered Species Foundation, nd). While Māori is one of three official languages[34], and words and phrases of *te reo* nestle within much kiwi[35] conversation, its spoken by fewer than

---

[32] Māori language.

[33] Treasures, as in, things of value.

[34] The other two are English, and New Zealand sign language.

[35] The diminutive for any person from Aotearoa New Zealand.

22% of the Māori population (StatsNZ, 2017). How do theories of justice formulate solutions to the problems of *societies* living together—human with human, human with nonhuman?

I talk of my experience, of Aotearoa's experience. It is not unique. The consequences of models of growth that fuel capitalism, liberal politics and prosperity in the settler states have drawn many people's and Peoples' attention to a far-off future. It is clear that deforestation, huge open-cast mines, nitrogen pollution, species extinctions, and the consequences of global climate change envelope Indigenous communities globally (United Nations 2013). They threaten to leave future generations (of all peoples but more directly the vulnerable and marginalised) with reduced welfare. That decreased opportunity for human flourishing stretches into the far future—indeed it may be permanent (United Nations, 1992). Many of the actions humans have taken which lead to potential harms to future generations are voluntary, driven by a desire for more, rather than the desire for enough (Shue, 2010). For Indigenous Peoples in the settler states, they reflect more of the same—a dystopian déjà vu in Kyle Whyte's words (Whyte, 2017).

This chapter briefly explores the contexts and tenets of decolonial theory within the settler state. It provides a counterpoint to the framings of Chapter 2, and advances the argument for reflecting on, and eliminating, the possible injustices embedded within liberal justice theory.

Settler States

> Yeah well, I think it is important to remember your ancestors and have knowledge of ancestors. So my grandmother lived to be 100. And she worked on a station in central Australia. When I say worked on a station she was basically the housemaid for the pastoralist, and she basically bought up their three children, to the extent that those children used to call her 'mum'. And she'd clean the property.
> When she was about 96 she wanted to go back to that country.
> […]
> And then, when we left the station we were going down a track and my grand-mother said; 'Just pull up here'. So we pulled up and she said to us; 'You see that broken-down old fence going that way and across the track and going this way?'
> It was an old timber fence, and plain wire and old barbed wire.
> And she said; 'I and your grandfather we built this fence.'
> And we said; 'Ah really, and how did that happen?'
> And she said; 'The pastoralist dropped me and your grandfather out here with axes and all the wire and virtually said to us', (and she can only speak Language, she couldn't speak English), 'Said to us; "I want you to build a fence, and I want you to go across to that pointy hill over there and then across to that flat top hill over there then across to that ridge up there and then back to here".'
> And I remember mum ask; 'What about…how did you eat?'
> And my grandmother said; 'No, no we just ate bush tucker and caught kangaroo and lizards and snakes.'
> And she said; 'Oh ok. And how long were you out here?'
> And she said; 'I don't know probably months and months. And then the pastoralist came back and picked us up and we went off and did another job.'
> Int. DR.

The settler states were originally settled by peoples now designated 'Indigenous Peoples'. As the territories of the Indigenous Peoples of these countries were annexed by the powers of Western Europe, the Indigenous Peoples themselves were killed, debased, terrorised, marginalised and disenfranchised. Their lands taken from them, they were expected to die out by the turn of the nineteenth century or, failing that, that they would become assimilated into the new colonial culture. Discouraged from speaking their native tongues, herded onto marginal lands, employed as cheap (or slave) labour, afforded sub-standard education and health care, these peoples have been relegated to the margins of both the natural and cultural environments of the settler states, as Des Rogers' recollection of taking his 96-year-old grandmother back to the station she had worked on as younger woman attests. While some have successfully 'assimilated', others have taken the best of settler opportunities and simultaneously retained culture—what Māori refer to as ambiculturalism (Int. MF.; Int. MH.). [36] Others have lost the advantages of culture and been unable to obtain

---

[36] The descriptor 'ambicultural' is widely used by Māori to describe their ability to 'walk in two worlds'. That is, they have the ability to operate and move comfortably within the dominant political and social milieu and within Māori contexts, to observe protocol and uphold Māori law, processes and procedure. It appears first to be used by Erik Schwimmer in 1968 (Schwimmer, 1968 64). He identifies in a postscript its potential as a more appropriate and accurately descriptive word than 'biculturalism' which he had used within his essay in the edition. A Google

any benefit from the settler system: they are marginalised from their past, marginalised in the present and have no clear role in future society. In effect, they remain colonised peoples within post-colonial states (Whyte, 2013).

Western models of growth, including growth in extent of settler-held lands—at the expense of diminishing Indigenous holdings—have driven people from their traditional territories, harnessed their labour—sometimes with no recompense—desecrated their sacred, destroyed languages, and torn relationships between human and nonhuman apart (Alfred, 1999; Turner, 2008). However, Indigenous Peoples are not simply passive victims of the violent plagues of growth listed above.

Indigenous Peoples have their own voices, and these voices have found expression in international, national and local fora. Internationally, there are the Indigenous Peoples Climate Change Working Group, the United Nations Permanent Forum for Indigenous Interests, the World Congress of Indigenous Peoples and UNDRIP. At national levels Indigenous Peoples in the settler states have come together to demand changes—Idle No More in Canada,[37] the DaPL/Standing Rock resistance in the USA,[38] the 'Uluru Statement from the Heart' in Australia,[39] and the ongoing Treaty of Waitangi negotiations in Aotearoa[40] for instance.   Each has drawn their nation's attention to past, present and potentially future injustices. And at local levels, Indigenous Peoples are engaged in such actions as restoring language, managing lands, resisting developments, developing their own businesses, and negotiating with their communities. The point is Indigenous *people* have agency on their own terms despite the ravages of settler colonialism and ongoing marginalisation.

However, as established earlier, within the settler states Indigenous Peoples are minorities. Their worldview is a minority worldview. They must obey the laws of the majority. And those laws are a product of epistemologies and ontologies at odds with their own (Mikaere, 2005; Watson, 2015). The post-colonial law is framed by a patriarchal racist liberalism which feigns to support equality (Mills, 2017).

Scholar search reveals it most often occurs now in relation particularly to management practices and Chinese Americans. I have not come across its use by Aboriginal people in Australia, although it could apply equally well for them as it does for Māori. For Māori being ambicultural is a signifier of something *beneficially additional* to that which the dominant society has, in contrast to the deficit discourse that frequently frames Indigenous identity.

[37] See http://www.idlenomore.ca/
[38] See http://standwithstandingrock.net/
[39] See https://www.referendumcouncil.org.au/event/uluru-statement-from-the-heart
[40] See https://www.waitangitribunal.govt.nz/

Māori and Aboriginal live with the burden of epistemological ignorance, violence and oppression—that is with the majoritarian myth that all members of the society are equal and have equal opportunities (Dotson, 2011; 2014; Mills, 1997; 2007). A socially constructed set of understandings identified that as 'natives' Indigenous lifeways were primitive, social structures and political systems nascent at best, and Indigenous knowledge and lifeways inherently inferior to those of the settlers. Indeed, as Australia's former Prime Minister demonstrated in 2014, at a breakfast with the then British Prime Minister, David Cameron, so ingrained is this ignorance he was able to state, with no seeming cognisance of inaccuracy, that before the arrival of the First Fleet, Sydney had been 'nothing but bush' (Henderson, 2014). In a similar vein, when I was at the beginning of this project, I approached for comment and guidance a senior scholar whose writings indicate significant sympathies with Indigenous injustice in the settler states. Almost in passing during our conversation this scholar queried whether or not there could be 'such a thing as Indigenous philosophy'. It appeared that 'philosophy' is a term that may only be applied when and where it follows the form and format of the Western academy (Dussel, 2016). In Australia, at least, there is a perverse and persistent *Indigenous ignorance*.

To be clear, therefore, throughout this thesis I take philosophy to mean endeavours to make sense of the world, what it is to be human, the structure and form of knowledge, right and wrong, and what it is to be in the world. The Māori and Aboriginal communities discussed in here have well-developed structures in which such knowledge is sited, participate in ongoing debate and deliberation on its contemporary meaning and application, and have tools and mechanisms for passing it to new generations (Durie, 1998; Graham, 2008; Mead, 2003; Watson, 2015; Yunupingu, 1994).

At issue is that liberal justice is wrapped in a cultural cloth that 'embodie[s] a series of culturally specific assumptions and judgments about the relative worth of other cultures, ways of life, value systems, social and political institutions and ways of organising property' (Ivison, 2000: 2). Consequently, in Settler States, Indigenous conceptions and demands of IEJ are disregarded by the dominating politics. However, the legitimacy of Indigenous dignity claims to cultural recognition, restoration, and furtherance, endorsed for example by UNDRIP, requires a review of the appropriateness of applying Western theories of EJ and IJ on behalf of Indigenous Peoples. Liberal and Indigenous philosophies, politics and culture, grounded in distinct foundations may overlap in some domains, however, there are substantive differences.

Recognition

Decolonial theory, in the settler state context, focuses on the Indigenous experience. It is an experience of violence, rupture, loss and oppression. It is also an experience of struggle and resurrection (Alfred, 1999; 2005; Coulthard, 2014; Durie, 1998; King, 1992; Stewart-Harawira, 2005; Turner, 2008; Whyte, 2013; 2016; Yunupingu, 1997). Decolonialism identifies the strong links between culture, language, and custom, and the concept of sovereignty. A loss of the former inevitably means the loss of the latter (L. Graham & Friederichs, 2012). Arguably, the drive within the settler states to assimilate Indigenous Peoples had just this goal—by stamping out the distinctly Indigenous elements of culture and being, Indigenous Peoples would lose any sense of independent sovereignty and accept the new status quo. Deeply rooted within the goal and philosophical justifications for colonial expansion and ongoing domination are claims of enlightenment and white superiority (Mills, 2017). Such was the implicit claim made by Australia's former Prime Minister cited above.

Despite their worst endeavours, the colonialists did not fully succeed in eliminating the Indigenous other. And, in the later part of the twentieth century Indigenous Peoples, with support from within their own territories and internationally, have (re)asserted their claims to culture, tradition, and sub-national sovereignty (Alfred, 1999; Coulthard, 2014; Dodson, 1997; Durie, 1998; Randall, 2003; Turner, 2008). Their claims can be unsettling to the dominant cultures, they challenge notions of nationhood, territorially settled property, and the modus of multiculturalism. As Duncan Ivison identifies, 'indigenous peoples are not simply a litmus test for our thinking about pluralism but represent a much deeper challenge to the way we conceptualise notions of citizenship, sovereignty, democracy and freedom in the first place—and indeed the nature of political philosophy itself' (Ivison, 2011: 131).

On September 13, 2007, after decades of negotiation and debate, UNDRIP was ratified—143 nations in support, four against.[41] Although they have since ratified the agreement, the four ex-British colonies of Aotearoa, Australia, Canada and USA resisted despite, or more correctly, because of, the significance to populations of Indigenous Peoples within their

---

[41] The International Labour Organisation first raised the issue of Indigenous rights in 1957—drafting the first international convention ILO Convention No 107. Imperfect, in that it was drafted without direct input with the people it represented, it heralded a turning point in international debate on Indigenous disadvantage, decolonisation and discrimination.

borders. This declaration, like all such UN documents, is not law. There are no associate powers to punish those nation states or other bodies who do not respect its conditions. It does however clearly identify norms for promoting Indigenous Peoples' dignity supporting environments.[42] Recognised by regional and international bodies as 'sub-national groups' with defining characteristics, '[t]hese norms [in addition to land claims] include the right of peoples to practice and transmit their customs, traditions, languages and belief systems to future generations; as well as the right to maintain the dignity and diversity of their cultures' (L. Graham & Friederichs, 2012: 4).

Earlier I asked, why is there something different about Indigenous Peoples' rights? Why are the 'universal' set of rights in the UDHR insufficient? The value in rights is in 'the extent that they protect or promote certain crucial interests that individuals and groups have' (Ivison, 2003: 323). However, interests can be and are conceived differently to the conceptions within liberal politics and philosophy. The interests Indigenous Peoples seek to have protected and promoted, the duties and obligations they have in the world are the product of difference. The UDHR was conceived under one logic—the obligations and duties within it are not neutral nor impartial (Barry, 2002); they accord with a particular way of viewing the world. The UDHR does not protect all that Indigenous Peoples hold valuable: its normative values are different 'entangled [as they are] within structures of informal imperialism' (Ivison, 2011: 132-3).

Strongly evoked throughout Indigenous Peoples' rights discourse are environment/nature, future generations, and respect for and obligations to past generations. Together they hold keys to cultural continuity and sovereignty. I stress here this is not the Luddite's call to 'stop the clock'. It is a call for co-generation within the settler states, of acts which recognise and work with plurality. It is a call to seek wisdom from diversity, to step from the constrictions of the 'imperialism project' into an exploration of freedom of being Indigenous and harnessing the depths of knowledge, experience, and ontology being Indigenous offer (Alfred, 1999; Coulthard, 2014; Durie, 1998; Stewart-Harawira, 2005; Turner, 2008). It is an invitation to the dominant culture to consider lifting the shades of Indigenous ignorance and to step into the lived experience of Indigenous Peoples (Figueroa & Waitt, 2008; Whyte, 2011).

The discourse suggests being Indigenous means connecting with, safeguarding, listen to, and immersion in, environment. Along with respect and language, environment, place,

---

[42] In the broadest sense of environment. Environment in this phrasing should be read to denote natural and cultural environments.

animals, and plants are integral to continuity of culture. The dominant cultures in settler states have failed to recognise the differences in philosophies and out of this unknowing failed to enable the dignity of their Indigenous communities (Figueroa, 2008; Whyte, 2011). The doctrine of *Terra Nullius* persists in justice theory when it attempts to universalise, wiping from the record the violence of colonisation, the ongoing lived experience, and the existence of living and evolving alternate cultures *which are modern* (Connell, 2007).

Power

There is a serious asymmetry of power in IEJ: the power is held by current generations of Westerners. Human activities have the capacity to render the earth uninhabitable within the foreseeable future (Rockstrom, 2009), and in so doing to inflict harms on future generations. What is at question is the spatial and particularly temporal distribution of goods and burdens. An injustice can be thought to have been wrought if the benefits accrue to the living while simultaneously they avoid the harms that are knowingly placed on future generations. That, we the living do not know the individual identity or cultural proclivities of those future people, will be irrelevant to them as they endure the burdens. It is conduct and actions, not the wronged party's actual identity or values, that are relevant to considerations of justice (Kumar, 2003). Knowingly altering global climate systems, degrading the environment, and depleting resources can be argued to be acts of wrong when they diminish the life prospects of our children and grandchildren—injustice rests in the doing, the acting. Control of 'the acting' rests firmly with dominant cultures and political and legal systems which take responsibility for national social justice.

While we may have an intuitive sense of what IJ may require of legislation, on the whole, existing frameworks fail to account for a worldview which might invoke a more wholehearted preparedness to sacrifice luxury now for (subsistence for) those who come later (Shue, 2010). In effect these frameworks privilege the living Western human or as Charles Mills suggests more specifically the white, Western, male (Mills, 2017) and have difficulty forestalling wrong-doing.

From such documents as Brundtland's Our Common Future written in 1987 (Brundtland, 1987), and the provisions of United Nations General Assembly resolutions of 1988, 1989, 1990 and 1991, the United Nations Framework Convention on Climate Change (United

Nations 1992), to the Millennium Goals (United Nations 2013a), the Human Development Reports (UNDP 2011), and the Report of the Indigenous Peoples' Global Summit on Climate Change (United Nations 2009) the need to preserve the climate system and nature for the benefit of future generations has been recognised as imperative. Each document states or implies IJ should be normalised, and at the same time makes clear that the interests of future generations must accommodate the needs and interests of the living. Apart from the last of this list of reports, each is written largely from a Western liberal framework. And despite the list, acts of destruction continue.

Why is IJ not normalised and what conceptual frameworks might facilitate a transition to such a normalisation? The argument throughout this thesis is that it is the conceptual frameworks, and that, despite intuitive acceptance, we lack experience of implementing IJ on expanded spatial and temporal scales. What might be needed to make IJ integral to (dominant, democratic) Western politics and political philosophy, economics, governance systems, and law and lore?

Discussion

> As I grow, gaining in years, but not losing youth, I see more and more the importance of philosophy. It's not a question of eating today, but eating tomorrow. …
> I consider philosophy to be so important that it even bewilders me when I am asked what it is good for. It serves to change the mind, the interpretation in order to see what we are doing to us. Because besides that, there are only appearances: the Coco-Cola, the wealth, the [North] American way of life.
> (Dussel, 2016)

Indigenous Peoples' are one of the leading sets of voices in environmental and climate change debates. Repeated refrains in their discourses reference cultural integrity for future generations and environmental justice (United Nations, 2010). Concern for their inheritors is two-fold: for the environment per se; and for the continuation of culture through environment and place. It is 'the relationship between the processes of the natural and social worlds' (Schlosberg, 2012a: 451), that is critical to this Indigenous framing of IEJ. It does not imply an intransigent and dogmatic 'living in the past'. There is no contradiction in Indigenous People seeking a life in the modern world within their living unique cultures (Durie, 1998), rather the discourse appeals to the creation of dignity supporting environments for the living and future generations, in which the intimate connection of human and nonhuman is paradigmatic (Alfred, 1999; Greene, 2011; Watene, 2016).

IEJ addresses a range of issues, many of which uncomfortably challenge the existing liberal paradigm, including: polluting and destructive technology; increasing greenhouse gas emissions; threats to eco-systems; climate instability; changing disease vectors and other health issues related to climate change; sea level rises; flood and drought; fluid migration flows, with potential for environmentally triggered vast mass migrations; increasingly high population densities and exponential population growth; and intense demand on natural resources for subsistence, life-style improvements and maintenance (for a comprehensive analysis of global environmental threats see Rockstrom et al., 2009). The actions of the living can and will impact the quality and wellbeing of the lives of people in the near and very far future. The things people do now will have an impact on generations many removes from the present. Some technologies, some human behaviours have the capacity not only to destroy landscape and nonhuman species but also to push humans to extinction (Crutzen, 2002; Crutzen & Stoermer, 2000; Rockstrom et al., 2009). IEJ argues for balance; human desire and development with the nonhuman domain, the rights of individual and community, material against non-material goods, past, present and future. Indigenous Peoples become concerned when the liberal view of balance is at odds with their own.

Philosopher Charles Mills challenges Burke's social contract narrative, liberalism and the objectivity of the liberal tradition. Far from framing the foundations of social order, Mills argues, the social contract is an intellectual sleight of hand. What is conjured is a sense of social equity born of shared citizenship and social participation. The partnership Burke proclaims is, Mills suggests, fallacious or at least non-inclusive. Society has always depended on the *racial* contract (Mills, 1997; 2007; 2017). Mills argues his case within the United States, here I make a similar claim for Aotearoa and Australia that;

> racial domination interferes with objective cognition, denies equal racial personhood, and generates rationalizations of unjust white acquisition. Thus they are all negatively transformed by the dynamic of racial liberalism. (Mills, 2017: xvi)

The claimed objectivity of the liberal tradition is objective only to the extent it is self-referentially white (and male). And alarmingly, it is unconsciously so. Mills urges for 'a self-conscious deracializing of liberalism that would begin by recognizing the centrality of a social ontology of race to the modern world and the acknowledgement of a corresponding history of racial exploitation that needs to be registered in liberal categories and addressed as a matter of liberal social justice' (Mills, 2017: xvii). Building from this, I suggest a self-conscious examination of IEJ reveals, in at least two settler states, ongoing colonisation

of the ancestors, living and future descendants of the original inhabitants and the environment.

Similarly, David Pellow suggests state violence towards brown and black bodies is directly intertwined with violence against nonhuman (what he calls the 'more than human'), and that we must 'explore their myriad connections in order to excavate the roots of racist violence no matter the form it takes' (Pellow, 2016: 222). The subjects of environmental injustice are (primarily) people of colour, including Indigenous communities, and nonhuman. His suggestion is that critical EJ studies 'extend beyond questions of distribution to incorporate a deeper consideration of theory and the ways that gender, sexuality, and other categories of difference shape EJ struggles' (Pellow, 2016: 223). The tacit acceptance of violence towards nonhuman, the 'gross animal' to which Burke referred, is narratively extended to marginalised persons. That is, species/animality discourse is extended to marginalised peoples, thus legitimising violence against them. It is his claim that,

> '[c]ritical EJ Studies speaks to the ways in which various social categories of difference work to place particular bodies at risk of exclusion, marginalization, erasure, discrimination, violence, and othering. These insights are important for building an understanding of the ways that intra-human inequality and oppressions function and how they intersect with human-nonhuman oppression' (Pellow, 2016: 225).

Justice based in human exceptionalism, Pellow and Mills suggest, actually protects *white persons'* exceptionalism. In so doing people of colour, colonised Indigenes, and nonhuman are excluded. Justice theories need to disentangle the racialized and othered elements of theory for it to be decolonised and/or radicalised. Only then can theory to be inclusive in the settler states.

While Mills and Pellow offer precedents for decolonising/radicalising liberal theory and EJ, theories of IJ are largely uncritical. That said, however, given all Indigenous justice reflects both IJ and EJ concerns, calls for Indigenous justice form a critique of both. Entangled within the intergenerational social contract are the very narrative roots of 'the Indigenous problem' Rosalie Kunoth-Monk so firmly rejected on QandA, when she stated:

> You know, I have a culture. I am a cultured person. … I am Arrente-Alyawarra First Nations person. A sovereign person from this country. … Don't try to suppress me. And don't call me a problem. I am not a problem. [43]

Indigenous Peoples' experiences of colonial and post-colonial injustice are explicitly and always intergenerational and environmental (see for instance Whyte, 2017). There is a nexus

---

[43] The full quotation opens this thesis.

of interests within these justice domains. However, arising at the intersection of intergenerational, Indigenous and environmental justice (IIEJ) are a complex of issues yet to be directly resolved by liberal theorists. IIEJ pushes theory beyond the boundaries of some key liberal assumptions from which it arises—assumptions based in the (unconsciously?) white ontology of liberalism, and wilful manufacture of epistemic ignorance of the Indigenous experience. These overlapping domains refocus our attention back to Burke's assertion—social advance depends on inescapable intergenerational obligations. Addressing the long-term EJ concerns of Indigenous Peoples, many of whom are minorities captured in the web of liberal democracies, requires stretching the fabric of each separate justice domain (environmental, Indigenous and intergenerational). What is required is a reconceptualization to weave an intentionally deracialised and decolonised liberal theory of IEJ. The ontological presumptions of liberalism, the obscured Eurocentric whiteness particularised in Figure 1.1, must be brought into the open and addressed.

Bedded within my argument that IEJ must be decolonised is the claim that the colonial project is not yet truly post-colonial. That is, while colonial rulers may have withdrawn their interests from the state, while their agents may no longer have direct access to the wealth embedded within colonial soil, fauna, flora and human inhabitants, the culture from which those acts were justified is now that which dominates the settler states (Connell, 2007; Corntassel, 2012; Keenan, 2014; Memmi, 2003; Mikaere, 2003; Moreton-Robertson, 2015; Povinelli, 2016; Stewart-Harawira, 2005; Sullivan, 2007; Watson, 2015; Whyte, 2015). The second claim is that so long as this cultural domination continues Indigenous Peoples of the settler states remain oppressed. By exploring aspects of the 'concepts, assumptions, norms, values, and framing perspectives that reflect the experience and group interests of' (Mills, 2017: 82) some Māori and Aboriginal communities the next section demonstrates how thoroughly Indigenous agency is hamstrung.

Section 2: Living at the Intersection — barriers to realising IEJ in settler states

Chapter 4: Still Talking Past Each Other — more than homo economicus

> Indigenous peoples who seek to realize the goal of harmonious coexistence within their communities find that this is impossible within the mainstream political system as it is currently structured.
> (Alfred, 1999: 22)

The preceding chapters established a number of epistemological and ontological schisms dividing Western and certain Indigenous Peoples' understanding of IEJ. This chapter focuses on one schism: the values humans assign to place and the material, and how those values impact conceptions of IEJ. Based around the Aotearoa government's desire to generate revenues by expanding the nation's oil and gas exploration and mining, it explores one *iwi's* resistance to exploration in their *rohe*[44]—specifically their coastal waters—and their assertion of *mana moana.*[45] While the government values the oil beneath the ocean floor, Te Runanga o Te Whanau-a-Apanui[46] (Apanui) values the integrity of the whole—the place. The government wants to extract value, Apanui wants to preserve value. The government's goals reach 25 years into the future, Apanui's stretch through all time—past, present and future. Apanui's resistance included a flotilla, launched to frustrate off-shore exploration (and which was thwarted by naval intervention), and subsequently, an attempt to delegitimise the explorations via a High Court action. Reviewing the submissions and affidavits from the High Court case between Apanui and the Minister of Energy and Resources (MOE),[47] and Apanui's feedback on revisions to the Foreshore and Seabed Act 2004 (FSA) uncovers key differences between the approach each has to material values and place.

There are significant ruptures between the Crown and Apanui, and their approaches to environmental governance. Each constructs knowledge differently. The Crown works within a positivist epistemological frame: The earth divided into measured blocks, and resources quantified. Apanui uses *whakapapa*[48] to guide their understanding of the world.

---

[44] Territory.
[45] Authority over the sea, respect coming from guardianship of the seas and sea life.
[46] Te Runanga o Te Whanau a Apanui represents 13 of the 15 hapu (extended) families in the approximately 11,000-person iwi.
[47] CIV-2011-485-1897 [2012] NZHC 1422
Greenpeace of New Zealand Incorporated and Te Runanga o Te Whanau-a-Apanui vs The Minister of Energy and Resources and Petrobras International Braspetro BV.
[48] Literally, to place in layers, whakapapa is the epistemological framework of Māori: 'for something to exist and be known, it must have a whakapapa; put another way, in order to 'know' about a thing (or a person) one must know its whakapapa' (Roberts, 2012).

Ontologically, the Crown is anthropocentric and the drive for economic expansion is primary to decision making. Apanui's worldview entangles human and nonhuman, material and transcendental. It focuses on sufficiency and protection of the environment including commitments to reciprocity, ancestors and future generations. Despite over 150 years of negotiations between the Crown and Māori they are (still) talking past each other.

I say "still" talking past each other to highlight the ongoing subordination of Māori values by the dominant Western institutions and to reference two historical moments—one political, one academic. First are the differences between the Treaty of Waitangi and Te Tiriti o Waitangi.[49] Signed on February 6, 1840, the history of Māori and the Crown talking past each other dates from at least this Treaty for there is not one but two treaties: the English rendition of the Treaty of Waitangi is not a faithful translation of Te Tiriti o Waitangi (Te Tiriti).[50] And then there were 'several different versions [of Te Tiriti] with significant different meanings … circulated around New Zealand' (A. Henare, 2007; 54). Māori 'signed up to' the terms and conditions of the Māori rendering(s), not the English version.[51] There is also reason to believe that the Māori signatories to Te Tiriti understood the document and the act of signing the document quite differently to way the representatives of Queen Victoria understood it. It is valid to ask if 'as members of a culture accustomed to the flexibilities of oral contractual negotiation … would they have appreciated the binding nature of the document in accordance with British intent' (A. Henare, 2007; 54-55). The foundations of Māori knowing, *whakapapa*, the chiefs brought to Te Tiriti make it reasonable to infer not only were the translations incompatible, but also the epistemological groundings of British and Māori culture, understandings and ways of being mitigated against shared meanings.

Second, Joan Metge and Patricia Kinloch's ground-breaking paper 'Talking Past Each Other' of 1978 in which the authors compare fundamental differences in how Māori (and Pacifika) and Pākehā communicate (Metge & Kinloch, 1992). The Treaty of Waitangi and Te Tiriti differences and Metge & Kinloch's paper draw vivid pictures of the culturally embedded nature of communication, communicative procedure and the assumption humans make that

---

[49] In it Queen Victoria of England made fundamental promises to protect the Māori people from rapacious settlers in return for the right to govern. Despite a history of breaches, the Treaty of Waitangi has enabled Māori to claim restitution and redistribution of some resources over the later part of the 20th century, continuing into the present.
[50] It was Te Tiriti (actually a number of copies of Te Tiriti) that travelled Aotearoa New Zealand in 1839-1840 gathering the signatures of Māori leaders.
[51] There is insufficient space to examine the differences here, however, suffice it here to say they are materially significant. Te Tiriti is the reference for ongoing negotiations between the Crown and iwi, and for Treaty of Waitangi claims.

their way is *the only* way of communicating, that is, the assumption that what is familiar to *me* or *us* is universal.

The argument is not that Māori have not embraced materialism, for indeed some have wholeheartedly and successfully. Rather an argument here is that when deciding on issues of IEJ, the decision-making parameters Māori use encompass multiple values and (very) long timeframes. Māori may apply Māori custom and practice in one context, and Western custom and practice in another. That is, there is epistemological and ontological fluidity between the dichotomies of Fig.1.1 (page 20) within theory and practice, in populations and within the individual person. The case study, however, highlights the conflicts that arise for Apanui when the material values and the communications style of bureaucrats acting for the MOE limit Apanui's capacity to fulfil obligations and duties to pace, *as Māori*, according to Māori protocol and practice.

Since colonisation, Māori have been encouraged to 'assimilate', to adopt the mores and values of a Westernised society.[52] Simultaneously Māori language, culture, ontology, epistemology, cosmology, and traditions have survived. Many Maori can and do describe themselves as ambicultural:[53] they understand, identify with, and operate comfortably and successfully within both cultural paradigms (Interviews with Marama Fox, Anake Goodall and Manuka Henare in 2015). Indeed, my respondents reported a quasi-geographic mappability. On matters of material values, Marama Fox suggests, in the city, where they hold jobs and own individual title to property, Māori operate within the Western material paradigm. The commercial objectives for *iwi*-owned enterprises are embedded in the capitalist structures of Aotearoa and global economies. Indeed, in the *iwi* enterprise context, Anake Goodall suggests Māori have learned the Western model 'too well' at the cost of traditional values (Int. AG.). However, in their tribal homelands, and *tūrangawaewae*,[54] Māori values to the material remain manifest and dominant (Int. MF.).

Apanui holds true to *iwi* traditions. Traditional lands, waters, sea and riverbeds, forests, fish and birds are part of their common heritage over which they are *kaitiaki*, or guardians for past, present and future generations. Simultaneously the iwi runs a number of economic initiatives: a fishing boat, IT company, IT training school and a school for youth offender

---

[52] As with Indigenous Peoples in other colonies around the world.
[53] A similar 'learning' of Western capitalist values is reflected upon by Taiaiake Alfred as he discusses Canada's Indigenous Peoples experience (Alfred, 1999).
[54] Home place, place where one has rights of belonging through kinship.

'rehab'. The Government and legal system are firmly based in a single Anglo tradition. While Māori and English are both official languages, the institutions of state and law are not ambicultural. The dominant systems inflict epistemic oppression (Dotson, 2014) and render Māori ontology unknowable[55] and fail to accommodate Māori ambiculturalism, obliging Māori to reconcile intergenerational environmental obligations within two distinct, and frequently conflicting ontologies.

Section 1 examines the theoretical problems for IEJ arising from Western material values, particularly property rights. Section 2 briefly backgrounds the events leading to the court case, tracing the government's objectives and actions, and Apanui responses, all of which provide the source material for this analysis. Section 3 and Section 4 contrast Western material relationships with the environment, Apanui's custodial relationship and on how obligations and duties to future generations are differently understood. In conclusion, the case studies show while IEJ is intrinsic to Apanui lifeways, the material assumptions and procedural frameworks of the government hamstring the consideration and realisation of both IEJ and IIEJ.

Materialism's stranglehold on intergenerational environmental justice

> …owning property means that we have something of an absolute natural right to it—a right protected by legitimate government but one that should not be limited or modified by the government. (Meyer, 2015: 96)

Earlier I linked my use of the word materialism to the epistemologies, ontologies and practices that imagine nonhuman largely in terms of its economic value and the imaginary where 'value' is understood as relative to human interests. Central to this materialist imaginary is property ownership. It is a basic tenet. The right to exclusive property ownership is an assumed 'good' and a 'right' by Western justice theory. Property rights are integral to the UDHR[56] and the CA and legitimised in law and legislation. Indeed, they are axiomatic to Western social structure and so inextricably bound with notions of wellbeing and dignity, a critical measure of success (personal, corporate, national) is growth in material wealth. Property itself includes land, rights to land-use, and more abstract ideas such as the

---

[55] While a reference to Dotson and Whyte's 2013 article (Whyte, 2011b), suffice it here to take the word at its literal level.
[56] Article 17
1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

intellectual property—it is land and the resources within the land that are the focus here. John Locke justified land-based property rights, and their standardisation in law and politics, in his *Two Treatise of Government*, most explicitly in The Second Treatise, Chapter V, paragraphs 25-51(Locke, 1997):[57] A tradition continued within the Western canon by, for instance, Bentham, Hume, Mill and Hegel (Meyer, 2015).

While there is no one interpretation of Locke's intent, his work has been influential in guiding liberal thought (Tuckness, 2005). Initially, in Locke's view, land, waters, minerals, plants and animals (resources) become owned as property when someone through personal labour improved or acquired resources from 'the commons' (2V §27, 30, 32, 45). Money became a proxy for labour and allowed individuals to acquire greater property holdings than their direct labours could improve (2V §37, 50). Importantly, resources may be, and on Locke's and the liberal account, *should be*, appropriated into ownership parcels to ensure their improvement and increased productivity/return. Ownership rights give the owner a right to gratification from the resource—provided, at least for Locke, there is no 'spoilage' (2V §31). Locke unequivocally identifies human dominion and property rights over all things that can be harvested, killed or harnessed for human use and betterment (2V §26).

Thus within this key strand of Western liberal philosophy the value of nature and the environment, conflated to land and property, is strictly instrumental. Worth rests in the value of people's labour and the price or usefulness people attach to and derive from property. The conundrum for IEJ is to establish a balance between instrumental property rights in the present, the subsistence and quality-of-life rights of future generations and any potential intrinsic value future people may place on the environment.

IEJ addresses inequalities arising when the living extract immediate benefit from the environment and resources and pass burdens to future generations. Its focus is to design a framework to ensure 'the profligate generation' (Gardiner, 2011b), do not plunder the environment at the expense of future generations. Locke's theory presupposed ever-available commons to be appropriated into ownership (2V §33), and subsequent liberal materialism is premised on infinite growth trajectories, increasing wealth and sophisticated technological fixes.[58] Reconciling a finite planet with infinite material appetites and marrying

---

[57] Hereafter 2V.
[58] Although he does go on to identify the advent of money as a proxy for labour has enabled people to alienate huge tracts of land, thus reducing the opportunity of others to access it (2V §36).

obligations to avoid unfairly burdening future generations while tapping the environment for immediate benefit poses some intractable problems.

Although irreversible environmental damage continues to accrue, some people call for continuing growth and continuity of practice.[59] Based in contract, Lockean property rights, and expectations of increasing wealth and material gains, one response to IEJ is to pronounce it 'incoherent' (Ball, 2008) or to propose wealth and technological inheritance as compensation (Nordhaus, 2008; Stern, 2007). Money, technological advances, science, future inheritances, are said to sufficiently compensate future generations for environmental damage and resource depletion.

Embedded in a materialist framework liberal IEJ focusses on what current generations may take, without unfairly denying future generations access to similar assets or asset values. It interrogates the expected material wellbeing of future generations built on inherited wealth and iterative advances in technology and knowledge (de-Shalit, 1995). Caught in this debate IEJ has become an economic calculation balancing current expenditure against future wealth (Stern, 2009a).

On this worldview, IEJ must work within a paradigm that disconnects the environment from the human. What is important are contracts between people—ancestors, the living, and future generations. In such a paradigm it is argued that future generations are owed not the same environment and resources, but something of similar monetary/material value. As discussed in Chapter 2, the materialist and property ownership structures place significant barriers to the way we conceptualise IEJ.

Where Māori apply their traditional values, their *tikanga*, resources are not property, but part of intricate kinship relationships over which Māori are *kaitiaki*.[60] In this context, the obligation of *kaitiaki* is to *improve* the environment and available resources for future generations (Durie, 1998; Mead, 2003; M. Roberts et al., 2004; Selby et al., 2010; D. Williams, 2001). The next two sections examine how liberal materialism is reflected in political and legal practice in Aotearoa and how that limits Māori agency, and creates ontological and practical dissonance in the realisation of culturally appropriate IEJ obligations.

---

[59] See for instance the Australian Government's Intergenerational Reports.
[60] Guardians/Trustees.

Opening the Raukumara Basin to petroleum exploration and mining

> The existing fundamental policy objective…to allow continuing investment in prospecting, exploration and mining for petroleum, is passive. It does not fit with the more active role government is determined it should take setting economic and social direction. Accordingly, an active policy objective <u>promoting responsible</u> prospecting, exploration and development that <u>contributes substantially to our economy</u> is proposed.
> (RNR13 §3:1 underline original)

Superficially, the government's commitment to revenue raising by selling rights to explore for and mine petroleum resources triggered the court case brought by Apanui against the Minister of Energy. But the conflict is, I argue, really between the Crown's philosophical framework and that of Apanui. The government actively sought foreign companies to exploit the reserves of oil and gas in an offshore basin adjacent to and within the *rohe* over which Apanui are traditional owners and custodians and within the country's territorial waters and Exclusive Economic Zone (EEZ).[61] Royalties from these projects will go towards 'economic and social development' (Gendall 2012: §13). The government thought the best interests of the nation's economy would be served by mining (Gendall 2012: §2.7). The philosophy and language of the legislation governing the Crown's obligations to people, economy, resources and environment are those of the (dominant) British-based legislative and economic structures of Aotearoa.

The substance of the introductory quotation, taken from a letter (17 October 2002) from the Ministry of Economic Development to the Associate MOE, set the stage for expanding the government's petroleum mining ambitions and precipitated a review of the existing Minerals Programme for Petroleum (MPP).[62] This active turn drew the MOE into conflict with Apanui, forcing him to defend his own and his ministry's process and procedure. How did a move from passive to active policy objectives land the MOE in the High Court? The pivotal events are briefly outlined here.

Deep within the folded and faulted layers of sedimentary and metamorphic bedrock of Aotearoa rest Cambrian hydrocarbon remnants of ancient forests—deposits of petroleum

---

[61] In Aotearoa the Crown 'owns' both the seas and resources in it, sea floor, and mineral reserves under the sea floor. I explain the complexities of this ownership claim further on in sections 2 and 3.

[62] This letter is one of numerous documents submitted on behalf of the Ministry of Energy in their defences submissions to the High Court case bought by Greenpeace New Zealand Incorporated and Te Runanga o Te Whanau-a-Apanui against the Minister of Energy and Resources and Petrobras International Braspetro BV. Submissions and affidavits to the case and documents RNR1-RNR46. A list of the documents used is found in Appendix A.

The researcher accessed these documents, with the permission of the Court and Judge Mackenzie, at the High Court of New Zealand in February 2015.

and gas owned according to the Petroleum Act 1937 (PA) by the 'Crown' or government. An ownership disputed in 1937 and still contested by Māori (who claim the deposits form part of their *taonga*[63] protected by Te Tiriti) but which the government continues to assert. These deposits represent considerable potential wealth for the 'owner'.

As revenues from the existing offshore drilling dwindled, the government commissioned new seismic testing to uncover potential oil and gas bearing geological strata along coastal margins and within the EEZ. New mining operations were seen as potential replacement sources for lost revenue streams and the increased revenues from royalties could keep taxes low, and fulfil the government's goal to 'proactively support growth' (RNR13: §7:3).

By 2007 the government had spent $3.7m (RNR 46) collecting data from the seismic testing. Indications were the Raukumara Basin held significant deposits. The Raukumara Basin lies offshore from the remote and sparsely populated East Cape (see Fig 4.2), and reasonably close to the major Tauranga Port facilities. It also lies within the *rohe* of two *iwi,* Ngāti Porou in the South East and Te Whanau a Apanui to the North West of the Cape, and their associated *hapu*.[64] Divided into two blocks, the basin was opened in 2008 to tenders from well-resourced and experienced foreign companies.

Despite a fourteen-month window for tenders, only one company entered the race, Brazil's Petrobras. They received a 5-year exploration permit on 1 June 2010 and commenced off-shore operations in 2011.

The Crown is required by law to consult with *iwi* 'geographically associated with the proposal'. Sixty-nine *iwi/hapu* were notified, supplied with an outline of the proposed exploration, informed of the consultation process and given 20 working days to respond (RNR 46).[65] The terms under which they could request changes to the proposed block were tightly prescribed. Significantly, the MOE's obligation was simply to give the request 'full consideration (RNR46: Attachment 3)'. The parameters for objections from *iwi* and *hapu* were narrow, effectively

---

[63] Property, goods, treasures.
[64] Sub-tribal groups with members drawn from an extended family.

[65] The 69 *iwi/hapu* in the region were invited to provide comments and seek direct consultation if that was their wish (Gendall, 2012§30). It is important to note however that the two *iwi* (and associated *hapu*) adjacent to the blocks and into whose traditional *rohe* the blocks encroach are Te Whanau a Apanui and Ngāti Porou. No other consulted iwi have *rohe* claims to the block. It might also be noted here that iwi are comprised of hapu: therefore for instance Te Whanau a Apanui iwi represents 15 *hapu*. The invitation numbers might be interpreted as suggesting more Māori were consulted than was actually the case as *hapu* are 'double counted' in that they are incorporated into *iwi*.

restricted to requests to exclude mining from their sacred places such as *urupa*.[66] There was no clear opening for ontological objections to the mining.

On 19 August 2008 Apanui received their invitation to comment/consult with Government representatives in writing or discussion *kanohi ki te kanohi*[67] or at *hui*.[68]

Dayle Takitimu, the lawyer for Apanui, responded by email (RNR41) the following day:

> I have spoken to the Crown negotiation team about this proposed consultation—and in fact our concern that this matter is being progressed at all while we are in negotiations regarding the recognition of our interests in the foreshore and seabed. We have asked that no action would be taken by the Crown or its departments to affect our interests until after the negotiations had been completed, the Crown made this undertaking in the Terms of Negotiation. Instead we find that this is not the case, and we have to deal with different Government ministries progressing their agenda whilst we are trying to protect the interests of the iwi.
> … [I have] conveyed [to the Ministry of Justice that] I think consultation will likely inflame a rather fragile negotiating situation here on the coast. Therefore, in order to preserve the goodwill and good faith the iwi have in negotiations we would like consultations with Te Whanau a Apanui managed through our negotiations team, as has become the practice with other government consultations …
> (RNR41, italics added)

In response, Mr Robson, for the MOE, emailed, 'I am happy to receive your views on the proposal as soon as you are able to forward them' (RNR41), and he suggested that Apanui consider consulting with Ministerial representatives during their visits with the adjacent *iwi*, Ngāti Porou the following month.

Robson ignored Apanui's request for a single government contact and a delay until negotiations on the FSA were completed.[69] To Apanui, the reformulation of FSA and the process for opening the Raukumara Basin for oil and gas exploration should properly be sequential. That is, it was their position, because they view the environment and activities within the environment as a single system, that the outcomes of the FSA flow into any decisions about exploring the basin. This holism was elaborated on at length in the Affidavit of Mr Gage to the court (Gage, 2012), and will be explored further in Section 5. Robson fails to acknowledge Apanui's concerns and objectives and he failed to seek further clarification if

---

[66] Urupa—cemeteries—as sacred places are ontologically easily understood by Pākehā who also treat graveyards and key memorial sites as sacred. However, applying a sacred relationship between humans and the non-human realm is at odds with the Western view.
[67] Face-to-face.
[68] Meeting(s).
[69] FSA, in response to court ruling that Maori interest (traditional 'ownership') of the foreshore and seabed had never been extinguished, had hastily formalised that which the government and many New Zealanders had thought 'fact', and established the Crown as owner.

he was unsure of the intent. Nor does he appear to appreciate, or take into consideration that the *iwi* had few resources to apply to the two requests, or that the matters of the FSA remained unresolved.[70] From these very early days, Apanui and the government agents were talking past each other—the means of problem-solving and decision making framed in different cultural processes and by an underlying disjuncture in ontology and worldview, as we will see.

Apanui did not respond to subsequent attempts by the ministry to contact them nor did they enter into further dialogue with the ministry before exploration began. Apanui remained silent until Petrobras was positioning its craft to start seismic testing in the Basin by April 2011. Then, in conjunction with Greenpeace, they blockaded it with a flotilla of sea-vessels. Lasting 42 days, the blockade culminated in the arrest of the skipper of Apanui's fishing vessel San Pietro (Scoop, 2012) after the Government sent in the navy to break up the flotilla.[71]

Throughout the blockade and subsequent court case, Apanui spokespeople stressed their *mana moana*—their sovereignty over, respect arising from, and obligations to the marine environment in its totality—and obligations to future generations. Additionally, close on the heels of the Deepwater Horizon disaster in the Gulf of Mexico Apanui feared contamination of their *kai moana*[72] which remains an important part of their diet, and provides the substance of their *manaakitanga*—traditional obligations of reciprocity and hospitality to visitors (Gage, 2012).

Incomplete in their communications during the consultation process, and thwarted in their direct actions they embraced their ambicultural skills and enter the Anglo-based legal system meeting their adversary on its home turf. On 19 September 2011, Greenpeace and Apanui filed proceedings in the High Court at Wellington, heard 5 - 6 June 2012 before Judge Warwick Gendall.[73] The basis of the claim was procedural rather than philosophical, although, at heart as we will see, this is an ontological conflict. Greenpeace and Apanui claimed the Minister had not complied with obligations under the MPP to assess environmental effects of exploration nor complied with international environmental obligations under the United Nations Convention on the Law of the Seas 1982.

---

[70] It was not until 28 November 2008 the MOE received an Iwi Consultation Report that noted specifically the Crown considered the permit process and the Foreshore and Seabed Act separate issues.
[71] There is a separate story on the legality and morality of a government using its own military forces against citizens, which will not be pursued here.
[72] Sea food.
[73] CIV-2011-485-1897 [2012]NZHC 1422.

The Judge rejected these claims on the basis of the Crown's property right to the resource, and that the Minister had fulfilled his procedural duties (Gendall, 2012). An appeal lodged by 17 July Greenpeace and Apanui with the High Court was dismissed by Judge Mackenzie on 15 May 2013.

Ironically perhaps, on 5 December 2012, Petrobras withdrew from all operations in Aotearoa and the government started searching for new partners to explore and exploit the Raukumara Basin.

A detailed examination of a range of documents from the MOE, the High Court of New Zealand and Apanui follows. They reveal the ontological dissonance implicit in the parties' engagement with the environment, resources/*taonga* and the material world. They highlight, too, a communicative divide the cultures have yet to effectively cross and conflicting approaches to IEJ.

For the Crown

> In the midst of Western societies that pride themselves on their respect for freedom, the freedom of Indigenous people to realize their own goals has been extinguished by the state in law and to a great degree in practice.
> (Alfred, 1999: 47)

The extensive submissions presented to the High Court by the Crown (particularly RNR13-46) reveal that the Crown focused throughout the decision-making process on its property right to the potential petroleum deposits up to 3,000 metres below the sea surface 12-200 km offshore from East Cape, and within Apanui's traditional *rohe* (RNR46). The Crown asserts an obligation to expand offshore mining operations, to boost revenues and replace diminishing production from existing mining operations. Based in the PA the property right is proclaimed by the Crown, a right repeatedly contested by Māori. The submissions and affidavit (RNR13-RNR47) of the MOE (the First Respondent) focus on the Minister's legal and procedural obligations. Documenting the process undertaken to open the Raukumara Basin to exploration and mining they include records of policy and policy direction, cabinet meetings, email trails, letters, meetings, and diary notes. From within this collection, it is possible to identify the ontological foundation for the government's drive to mine the reserves and their material values, codes of engagement and assumptions.

The PA undergirds all subsequent legislation governing the exploitation of mineral resources in Aotearoa. Each relevant Act explicitly directs decision-making procedure towards the material/economic obligations of the MOE and excludes environmental and intergenerational obligations or duties. The language of the MOE's submissions and affidavits (and the judgement) focuses on Lockean material values, process, procedure, science and technology.

The MOE's language represents Western values. The terminology and expectations, the unwritten code of being, for the government and its agencies, including the courts are framed by secular anthropocentrism, focus on the present and drive for material wealth. So familiar, so engrained, is this code it appears the agents of the Government assume it is universal. But Metge and Kinloch identified in the 1970's that assuming universal communicative understanding leads Māori and Pākehā to 'talk past each other' (Metge & Kinloch, 1992). Implicit to the case is the Crown's assumption that the Western value system is universal. The Submission of the Applicants notes that while there is 'an enduring obligation to protect taonga', this is 'only by the means reasonable in the circumstances' (RNR 18 §84). Under whose standards of reason is not defined, however as the determination by the Judge to dismiss the case indicates it is on Western principles (Gendall, 2012). While consultation with *iwi* must consider their objections to mining, the scope of objections is bounded within the value system Pākehā understand—what makes the site important? Is it sacred? Is it used for gathering food? Are there Treaty claims over the land? (RNR 14) There is no room for philosophical contestation.

The language of the MOE's exchanges with the community, *iwi*, and the court does not express, significantly acknowledge nor makes comprehensive space for, any alternative value system or understanding of place. As the remainder of this chapter will seek to explain, it talks past Apanui's culture, spirituality, and values, and their obligations and duties to the environment and future generations. Apanui values and responsibilities under Apanui's own philosophy and system of justice are rendered invisible by language, process and procedure and epistemologies of ignorance.

In 2002, the Government directed the Ministry of Economic Development to review policy for petroleum mining, aiming specifically to increase value derived from this natural resource. The new active policy objective included finding new petroleum resources (RNR13 §2-§3).

The Government's sights were turned to taking 'an active role in the setting of economic and social direction' (RNR 13§7:3); rather than leaving it to the market as previously. 'Of particular relevance to the management of the Crown mineral estate is one of the economic objectives of MPP that New Zealanders "Derive considerable value from our natural advantages in terms of resources, climate, human capital, infrastructure and sense of community"' (RNR13 §8:3). Oil already contributed 1% ($850 million/year) to Aotearoa's GDP (RNR13 §15:4), however with existing fields nearing exhaustion the government sought new mining to at least shore up revenues. Because Apanui is unknowable and the Crown and Apanui talk past each other, without a touch of irony, the Crown set about exploring for offshore oil within Apanui *rohe,* decimating the very 'sense of community' they describe as integral to the MMP.

The Department claimed '[p]romoting exploration and discovery of new oil and gas fields provides for the nation to use to best advantage its natural geological resources' (RNR13 §19:5) secure in their epistemological and ontological certainties and the objective that 'the Crown, as owner of the petroleum resource, should obtain a guaranteed minimum royalty payment from the extraction of its petroleum' (RNR13 Appendix 1:9). Alert to the prospect of disagreement to the revised policy direction they identify that 'environmental groups may argue such a policy is inconsistent with the government's position of reducing greenhouse gases and ratifying the Kyoto Protocol on climate change. It may also be seen as promoting the government's resource ownership interests over other interests' (RNR13 §29:6). Nevertheless, these reservations were subsumed to the Government's resolute engagement with extracting maximum value from Aotearoa's petroleum resources over a twenty-five-year period.

As already noted the PA, §3 declares petroleum is the 'property of the Crown.' While Māori have repeatedly contested this ownership (based on Article 2 of the Treaty of Waitangi which preserves their interest in their *taonga* (treasures) (RNR 28)) the government has consistently asserted an exclusive property right over minerals. The title to land, sea, lake or river bed, may be held in individual or communal ownership, however, the mineral resources under the surface may not—they belong to the Crown. This repeated declarative ownership isolates the material property, the mineral resources, from their context. The intricate nexus of mineral, rock, soil, waters and air and allied wellbeing of living things, is peripheral to the understanding of ownership and property rights. Rather the government's worldview underpins a fragmented ownership framework, dissociating the minerals from their wider environmental and community context.

The ideological fragmentation is further embedded by the 'precaution' of separating ministerial responsibilities for mineral exploitation and environmental protections within the legislation. Indeed, the committee reviewing the Resource Management Act 1991 (RMA) sought to separate the MOE from environmental decisions because of a perceived potential for conflict of interest. Specifically, they state:

> The Minister of Energy is given a multiple objective mandate, including the conflicting roles of, on the one hand, acting as a regulator on behalf of the community in respect to the community's interests in sustainable management of the minerals and, on the other, acting as agent for the Crown's commercial interest in obtaining a fair financial return on its mineral estate. Such dual-objective management arrangements provide a formula for loss of accountability. This is because one of the objectives tends to provide an excuse for failure to perform the other, and vice versa. […] Separating such conflicting roles and giving them to different people has been a fundamental part of the recent reforms in the State sector. (RNR 15; §3.1.1; 56-7)

The committee is clear that it is very likely a Minister of Energy could easily be swayed to preference either environmental or extractive duties. To avoid conflicts of interest they suggest a separation of powers—the MOE should decide on exploration and exploitation while separate agencies are given to power to impose safety and environmental oversight. Within this framework, while there is a 'judicious' separation of powers, simultaneously there is an embedded understanding the matters of wealth generation, resource extraction, environment, and human habitat can be fragmented and approached in isolation.

By the time this case was heard, environmental, health and safety obligations were carved off and covered separately in the RMA, Health and Safety in Employment Act 1992 (HSE) and Maritime Transport Act 1994 (MTA). Submissions under each Act are triggered after the MOE has granted a Permit for mineral exploration. Each ministry is required to act in isolation and protection of human and nonhuman wellbeing atomised. The primary objective, revenue generation, is the concern of the MOE. Having granted the permit, the MOE's role in the process is completed. The permit holder then engages with other government agencies on risks to persons and environment. The risk to humans engaged in the mineral exploration and exploitation process is protected by the HSE & MTA. Risks to the environment are covered by the RMA. No one agency takes a fully holistic overview.

The MOE's only obligation was to consider financial security when granting the permit: the financial viability and experience of the applicant and the revenues to be collected as royalties and payments to the government. The MOE's defence rests largely on the fact he

was not required to consider the potential impact of prospecting or mining on animal or plant life, nor the environment, within or discontinuous to the permit block (RNR14). His understanding of his responsibility was that it encompassed maximising returns from the resources in isolation from wider and interconnecting human, animal, plant and environment relationships. The permit holder was required to apply to separate government departments, acting under different Acts, for sign-off on environmental and health and safety issues. Environmental and material considerations and responsibilities are disconnected.[74] As we will see in the next section, this is diametrically opposed to the worldview of Apanui.

The MOE is directly responsible for the maximisation of revenue potential from the country's mineral reserves. The Minister's responses to a review of the Crown Minerals Act specifically reject taking responsibility for future generations and ignores other IJ issues such as environmental damage;

> … we do not know what technological breakthroughs, particularly in respect of energy resources, are likely, or when they will eventuate. But it seems clear that scarcity, reflected through rising prices will provide much more direct and urgent signals than any planned (and inevitably compromised) attempt to second guess the future. (RNR16: 2)

The use of market mechanisms and expectations of technological 'compensation' to future generations is a device frequently employed in the West to discount the impact of modern environmental exploitation.

A framework which applies material value alone to environment as a 'resource' encourages immediate extraction of 'value' and discounting of future need. Ownership of property rights to the minerals enables the government to sell the entitlement. Encouraging international interest in exploration and mining the Raukumara Basin, the government's express intention, and legal obligation, was to raise royalties (RNR13: Appendix 1: 9). At the conclusion of the exploration period (5 years) they expected that, if commercially viable, the permit holder would immediately move into production phase. At no point in their submissions in this case does the Crown question this ideology: to them, it as a *sine qua non*, firmly grounded in the enlightenment philosophy of separation of cultural and natural, material and spiritual, and implied belief in limitless growth.

---

[74] In part this is to ensure that environmental integrity is not compromised by material values and the drive to extract revenue from the resources. That is, by separating the duties of the MOE and Minister for the Environment the latter will not be influenced to 'go easy' by material consideration.

There are no obligations to hold minerals in reserve for future generations nor to establish a mineral wealth fund to compensate future generations for loss of access to the resource. Resource ownership allows the 'owner' to act for immediate best self-interest, and gave them the ability to transfer or alienate the ownership at will.

As Judge Gendall identified, the government and its agents (mining permit holders) cannot be denied access to these resources, unless some significant mitigating circumstance was proven by the landowner(s). By legal fiat, the resource is, then, instrumentally valuable to the Crown, a source of potential revenues for the current government. The impact on future generations of burning the fossil fuels and adding to global greenhouse gases is at best downplayed, and that 'government's resource ownership interests' are 'promoted over' the interests of Maori, the environment and future generations remains marginalia. While the risk to widely recognised climate change harms is identified, the conflict with Māori values or obligations is not.

Indeed, in the division of the earth and sea's surfaces into measured discrete spaces (see Fig 4.1), which may or may not bear relationships to the physical features of the surface, ancient tribal boundaries, the interconnections of geological features, and animal and plant habitats across the prescribed boundaries are ignored. The Government describes the Raukumara Basin as covering '25,000 square kilometres of seabed and extends about 300 kilometres north northeast of East Cape. (RNR46:6)', extending from the coast to depths of 3,000 metres it is 100 kilometres wide and marginally southeast of White Island, Aotearoa New Zealand's most active volcano.[75] The Government proposed dividing the Basin into two rectangular blocks, their perimeters described by reference to points of latitude and longitude (RNR14-GAB4).[76] (See Figs 4.1 and 4.2)

Schedule 2

The Land

All that area of land containing 12,330 square kilometres, more or less, bounded by straight lines between the geographical coordinates (NZGD2000) commencing at a point:

Latitude		Longitude	
36° 30' 00.0000" S	and	177° 30' 00" E	then east to
36° 30' 00.0000" S	and	178° 10' 00" E	then south to

---

[75] Interestingly the risk posed by seismic activity in the area to mining operations and safety in noticeably missing from the Government's submissions.

[76] In the event as Petrobras was the only applicant, their permit was drawn across a newly described area covering parts of both blocks.

36° 40' 00.0000" S	and	178° 10' 00" E	then east to
36° 40' 00.0000" S	and	178° 30' 00" E	then south to
36° 50' 00.0000" S	and	178° 50' 00" E	then east to
36° 50' 00.0000" S	and	178° 50' 00" E	then south to
37° 00' 00.0000" S	and	178° 50' 00" E	then west to
37° 30' 00.0000" S	and	179° 00' 00" E	then north to
37° 30' 00.0000" S	and	179° 00' 00" E	then west to
37° 30' 00.0000" S	and	177° 30' 00" E	then north to

the point of commencement. Such an area is shown in the attached plan and more particularly identified in the spatial database held by the Secretary.

Fig 4.1 The Land (replicated from RNR 14, GAB4, Petroleum Exploration Permit 52707, p3)

The blocks cover territories over which both Apanui and Ngāti Porou have *mana moana*,[77] continuing from and continuous with their *mana whenua*[78] to what are now described as territorial waters (0-12 kilometres offshore) into the EEZ (12-200 Kilometres offshore). It is this proximity and overlap that triggers Apanui's *kaitiakitanga*[79] obligations. Nowhere in the Crown's defence submissions is there acknowledgement of such obligations.

That could be because the Crown Minerals Act 1991 §5(d)(i) states the functions of the MOE include an obligation to collect and disclose information to 'promote informed investment decisions' in the petroleum and gas reserves in Aotearoa (Crown Minerals Act 1991). Under MPP §12(b) there are obligations 'to obtaining by the Crown of a fair financial return from its minerals.' Neither Act addresses environmental, health or safety issues. The risks to the environment, the animal- and sea-life and inshore and nearshore environs are isolated from the ministry's responsibilities to promote investment.

The Crown's submissions and affidavits detailed the process and obligations of opening the Raukumara Basin to exploration. They were framed by a worldview in which material and environmental issues are deliberately separated, sea and sea-floor described as discrete and discontinuous property, and time projects from the present to the near (twenty-five year) future. Property ownership rights and government imperatives obligated the Minister to extract maximum return as quickly as possible, by permitting a foreign mining company to extract the resource, with the assumption that technological advances will in some (undescribed) way provide for future generations. The damage of mining and CO_2 emissions

---

[77] Authority based in care of the sea territory.
[78] Lands over which they have authority.
[79] The protocols of guardianship.

is left to the market and technology to solve in some indeterminate manner. There is no room here for human sentiment, intrinsic valuing of nonhuman nor for deep spiritual interconnectedness between human and nonhuman. Apanui's detailed explanation of their complex material and spiritual immersion in *whenua* and *moana,* their kinship with and obligations to 'forests and oceans, fish and fowl, the rivers and the soil and between people and the elements' (Durie, 1998: 22). received cursory attention from a Judge limited by legal process and procedure—bound by the same epistemological and ontological constraints as the Crown.
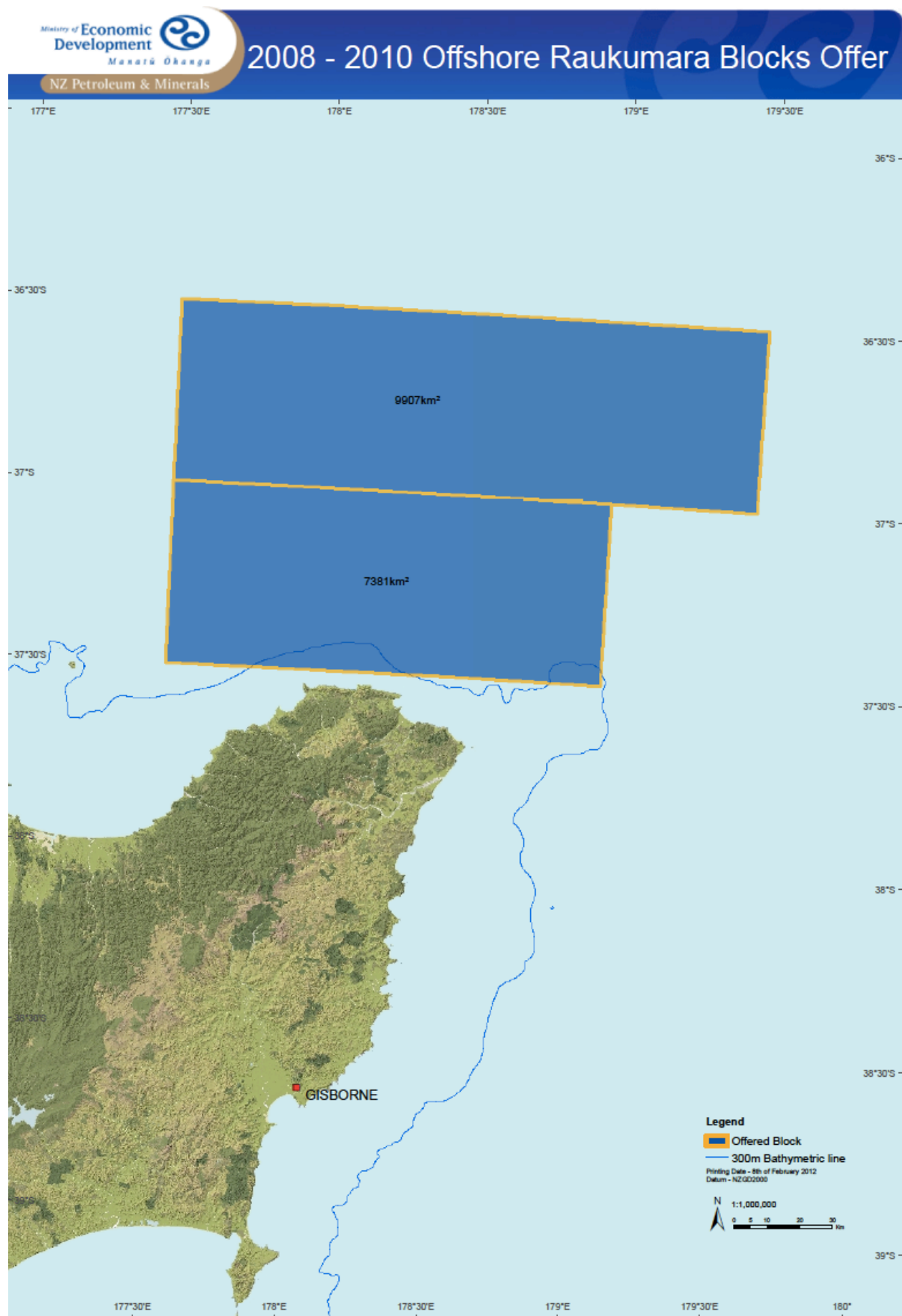
**Fig 4.2   Raukumara Basin (RNR 14, GAB4: sourced from
https://www.nzpam.govt.nz/permits/petroleum/block-offer/previous/pre-2012/)**

The values the government places on the environment and mineral resources, and its perceived obligations and duties to the environment and future generations are framed by this modernist, liberal worldview. It frames too, their ability to 'know' and accommodate Apanui's duties as *kaitiaki* framed within and informed by a sharply contrasting ontology, epistemology, and worldview, and limits Apanui's ability to affect control of their lives, environment and political intentions.

For Greenpeace and Te Runanga o te Whanau a Apanui

> Māori views of the world are based in the proposition that the environment is an interacting network of related elements, each having a relationship to the others and to earlier common origins. The personification of the earth and the sky as the parents Rangi and Papa underlines this point. Not only is a distinctly human dilemma presented as an explanation for creation, but by comparing the features of the environment to a family, a model is proposed for examining the connections and interdependencies which occur between forests and oceans, fish and fowl, the rivers and the soil and between people and the elements. In this sense … Māori give some priority to the principles which underlie sustainable management and the needs of future generations.
> (Durie, 1998: 22)

Apanui are not anti-materialist, indeed the economic welfare of the *iwi* is a major objective of the *Runanga* (see for instance their website http://www.apanui.co.nz/). However, the relationship between humans and the environment expressed in the papers examined here is so fundamentally different to that of the Crown it creates an antithesis. The parameters of engagement with the material, imbued with spiritual, economic and social dimensions, create the sharp contrast. Contained in the obligations of *kaitiakitanga*, Māori relationship with the non-human is custodial and stretches through all time. The entanglement of identity and care with self and more-than-self are echoed throughout Aboriginal philosophy and Indigenous cultures throughout the world.[80] I draw here on the Affidavit of Te Kou Rikirangi Gage (RG)[81] and Apanui's feedback to the FSA authored by Rikirangi Gage and Dayle Takitimu (DT).[82]

From the outset, RG's affidavit identifies his purpose 'is to clearly state my tribe's understanding and views concerning its historical and current relationship and responsibilities in relation to our tribal lands and sea area' (Gage, 2012: §9: 1). He attempts to create a communicative bridge across the ontological divide between the Crown and Apanui. He

---

[80] See for instance the works of Mary Graham, Irene Watson, Eileen Morton-Robinson, Deborah Bird Rose, Glen Coulthard, Kyle Powys-Whyte, Taiaiake Alfred, Dale Turner cited throughout this thesis.
[81] CEO of Te Runanga o Te Whanau a Apanui and a member of numerous Boards and government advisory panels.
[82] Dale Takitimu is the iwi co-negotiator and lawyer.

states he wants to establish a 'conceptual framework as a type of "toolkit" that hopefully will assist in interpreting and appreciating our worldview, our tikanga (laws, customs and practices) and more importantly the deep spiritual nature of our interconnectedness with Te Ao Turoa (the natural world; our lands and territories)' (Gage, 2012: §11(a): 1). Understanding that conceptual framework is critical to understanding Apanui's relationship to land and sea. Importantly, it indicates 'why [they] would never cede [their] mana or [their] tribal inheritance over to the Crown' and stresses *iwi* concerns over activities the 'may threaten the wellbeing of our mokopuna, and also the web of life and systems that our natural world provides' (Gage, 2012: §13(a)&(b): 2)'. *Mokopuna* are the future generations.

Gage clearly establishes for the Court Apanui's *relational* conceptualisation of the world from which obligations and duties arise. While Māori may now own title to lands as part of a post-colonial heritage, *iwi* territory is more than a material asset, it is a source of identity. The *whakapapa* of the land and people is intertwined, it is 'the means by which the interrelatedness of all things … is identified to our consciousness and our spirit. It relates us to the past and to our future, and to our mokopuna (descendants)' (Gage, 2012: §46: 7). A genealogy of all things, spiritual, human and nonhuman, built up in layers from the beginnings of time, through ancestral links to the present the *whakapapa* guides the iwi's relations and relationships with the territories over which they hold *mana* and to which they hold obligations of *kaitiakitanga*. *Whakapapa* is the foundation of the relationship: from it flows an understanding of intrinsic value in and interconnectivity between everything. When Apanui ask themselves the question "how must I relate?" the domain of relationships is all things—individually and as a collective whole. The whole and the things that make it up all bear intrinsic value.[83]

Tapu, mana, and *mauri* describe intrinsic spiritual elements of being—in all things, human and non-human. Translating them is difficult and translations vary by *iwi*, and author. *Tapu, mana,* and *mauri* encompass concepts of holy, dignity, authority, and life force: '[d]istinctions between inanimate and animate objects are … blurred…Nothing is lifeless' (Durie, 1998: 23).[84] They connect the spiritual realm with the temporal, linked through *whakapapa* and convey the message that 'we are part of an inter connected and interrelated whole' (Gage,

---

[83] See Jeremey Bendik-Keymer for an examination of the relational dimensions of morality. Applying his account of evil to this Māori worldview would then mean an 'unacceptable rending of human relationships' to all things, 'forests and oceans, fish and fowl, the rivers and the soil and between people and the elements' (in Mason Durie's words). That is, if evil results from destruction of the intrinsically valuable, it results from the pointless, or unjustifiable destruction of any part of the natural world (Bendik-Keymer, 2013).

[84] These concepts will be explored in much greater depth in Chapter 6.

2012: §18: 3). Through them, the relationships between people, fish and birds, plants, seas, rivers and land are created in a web of eternal respect and mutuality.

The non-human then is kin, a part of the layered stratum of interconnections to be nurtured not exploited. 'The idea of what is referred to … as "resource management" does not sit well with us, as it stems from a framework that sees these resources as things to be used for the benefit of human needs. Our framework sees these things as beings possessing their own tapu and their own mauri and who manage themselves quite happily without the intervention of man' (Gage, 2012: §31: 5).

This ethic of care and rejection of 'resource management' do not indicate that Māori do not harvest from the sea; they do. RG notes in his affidavit a major concern for Apanui is the possibility the offshore drilling operations will pollute and degrade that potential for harvest. Particularly he notes two groups for whom harvest of the oceans and nearshore regions is of ongoing importance. Firstly, for the poorer members of the *iwi* for whom gathering *kai moana* is necessary to supplement their diet. And secondly, to the *iwi* as a whole whose *mana* is closely tied to its ability to host visiting *hapu* and *iwi* and for whom providing feasts of *kai moana* is historically and continuously integral to that *mana*. So not only is protection of the seas important spiritually, ethically and morally, so too the *iwi* has practical, internal political duties and obligations as *kaitiaki*.

Apanui *iwi* management practices aim to maintain and protect biodiversity on their lands and seas, to enable gathering of *kai moana*, critical to the *iwi's* hospitality to visitors and provide 'backstop' food sources to 'economically depressed' *iwi* members (Gage, 2012). Not about generating profits, this is a relationship of sustenance and longevity and includes management practice of *rahui,* a temporary or permanent ban on entering or taking resources from a described area. Harvesting of the sea is conducted always with respect for the 'spiritual powers and vitality of mauri to which the productivity of the food gathering areas is inextricably linked' (Gage, 2012: §35: 5).

The marine environment within their *rohe* is part of the *iwi's taonga*. Discrete separations between human and nonhuman are not emphasised in this worldview, and neither are there separations between riverbed and river, or seafloor and sea. The seafloor and sea and the creatures within form a continuous whole as part of the *iwi's rohe (*territory). Care for the sea and the creatures within are intrinsic to Apanui's obligations as *kaitiaki* arising from *mana*

moana. Everything on this Māori worldview is interconnected and overlapping, lines on maps cannot corral separate elements.

As described earlier the Crown identified the area for exploration as discrete 'blocks' measured by degrees of latitude and longitude, in square kilometres and metres of depth, virtual containers of brine atop the targeted and all important petroleum- and gas-bearing sedimentary substrate. In that description the foreshore, sea, sea floor and oil deposits below are disjointed: and marine life forms are rendered immaterial. Apanui's worldview, however, 'sees our entire territory as a complete and interconnected biosphere, not something that can be legislatively fragmented' (Takitimu: 9). Unable to be fragmented and integral to identity, these are not measured, resource bearing property, but beloved, places upon which *iwi* identity is contingent.

With the Deep Water Horizon explosion in the Gulf of Mexico fresh in their minds, Apanui expressed concern that should mining proceed, it would be the deepest off-shore drilling operation in the world sitting beside an active volcanic and seismic zone (matters not addressed by MOE). Apanui stresses the risk of an accident polluting their territory. Any spill would not remain within the discretely bounded blocks, but rather spread through the waters, endangering marine life to the shore. Such a spill would hinder their role as *kaitiaki*—they would be powerless to protect the territory, unable to guarantee they could pass a healthy territory to future generations and unable to fulfil the Māori side of their political, cultural and moral ambicultural duties and obligations. The issue here is not one of philosophy, but rather of practicality. Aware that there are risks with these operations they are concerned that their particular obligation, resting in specific duties to ancestors, is to pass the environment to future generations in a better condition that they received it. While risk management requirements may be enforced by the RMA, Apanui recognises that when a spill occurs the damages are very long term. And while commitments under the law to resuscitate the environment may be undertaken by the miner, the area cannot be returned to a pristine state. As such, the problem here is that the MOE has not taken account of Apanui's *specific* obligations and duties over and above those within the RMA.

As collective 'owners' the *iwi* holds obligations and duties to the landscape, to *tipuna* and *mokopuna.*[85] Maori are *kaitiaki,* custodians, with obligations 'to protect both the physical and

---

[85] Ancestors and future generations.

spiritual wellbeing of all *taonga* for the present and future generations' (Gage, 2012: §41: 6). *Kaitiakitanga* places on *iwi, hapu* and *whanau* 'clear lines of accountability. […] Transfer of ownership of a resource away from tribal ownership does not release *tangata whenua* from exercising a protective role to the environment, although it does make the task more difficult since others will also have an interest' (Durie, 1998: 23).

While the Crown may claim ownership of the foreshore, seabed and oil deposits (an ownership Apanui actively challenge in their submission to the FSA consultations), that ownership does not release Apanui from their obligations and duties as *kaitiaki.* It remains incumbent on Apanui to take a precautionary approach to land-use and activities at sea, and more. *Kaitiakitanga* bears an additional imperative, derived from the values of *tapu* and *mana,* to *enhance* the environment for future generations, to leave it in a *better state* for their *mokopuna.* Under the obligations of *kaitiakitanga,* it was imperative Apanui protest the oil explorations and challenge the MOE as a precaution to protect the environment both for itself and for future generations.

97.3% of Apanui's traditional territory adjoining the coastal margin remains in *iwi* and *hapu* ownership (Gage, 2012: §55: 8). This 'ownership' relationship differs from that described by legal transferrable title, indeed, the 'characteristics of fee simple title … are inconsistent with our customary tenure. … [S]pace was traditionally utilised and governed by hapu, as collective entities possessing their own legal personality and authority' (Takitimu: 4). The right to alienate land is a challenge to the logistics of Apanui *tikanga:* it is 'inconsistent with the nature of collective hapu title' (Takitimu: 4). Understood as a collective *taonga*, territory is inalienable and held in something more closely resembling a trust arrangement, by the living on behalf of future generations.

The affidavit of RG stresses social, spiritual, material/economic and environmental values pervade all Apanui actions and decisions. That is, every decision in the material realm is screened through a spiritual, social and environmental lens. Every decision has an intergenerational dimension and is conducted in 'partnership' with the environment. As guardians, Apanui are responsible to ancestors for providing for future generations. They are responsible to the *mauri, tapu* and *mana* of the environment itself to ensure more than protection, they must improve on what they receive. There are no silos in this ontology, there is rather an interlocked, circular flow of non-living to living to non-living, ancestors to present

to future generations, land to sea to human to non-human, spiritual to political to material to ethical. Immersive connections and functioning guide relationships, obligations and duties. The Apanui relationship to territory described by RG and DT is the antithesis of the Crown's; '[the] terms of our relationships with the environment, … are governed by a tikanga (laws) of deep respect and spiritual bond' (Gage, 2012: §18: 3). They interconnect spiritual and temporal realms, the continuous overlapping places, described through genealogical relationships in which people and the environment are part of one family, 'in which we see ourselves as but a "tiana" or younger relative. (Gage, 2012: §31: 5)

IEJ, constitutive of *kaitiakitanga,* frames a set of obligations and duties that are integral to being Apanui, necessary for expression of culture, political influence and determination.

Discussion

> The critical thing about the Māori worldview is that there are two components—this is the traditional view—there is the spiritual world and there is the material world.
> And the material world comes out of the spiritual world, not the other way around.
> So everything one does in the world as we know it has to be referenced back to the world from which it has come.
> So there is always that close interactive thing between spiritual and material, between mother earth and humans and nature.
> And the trick to life is managing the two things.
> (MH, 2015)

The submission and affidavits of Crown and Apanui representatives in this case reflect the contrasting epistemological and ontological paradigms of the dominant Western procedural and judicial worldview and that of the *iwi*. The agencies and operations of government are isolated and discrete, with values prescribed by economic and material ambitions for the present and near future. Apanui submissions reflect a woven complex of spiritual, social, cultural, environmental, economic and material values stretching backwards from the start of time, through the present into an infinite future. While the government's position is uni-dimensionally material, Apanui's, is not so much non- or anti- or post- or new-material, but rather a form of complex place-based multi-materiality, see Fig 4.3. The contrast is so great that throughout the consultation process, during the trial and within the judgement(s), the two talk past each other. The powers of state structure, the limited consideration the Crown is required to give the concerns Māori raised in consultations, and ministry-determined consultation processes perpetuate an ignorance of *Kaitiakitanga*. This becomes particularly problematic when the dominance of the Western paradigm renders political justice and IEJ for Apanui invisible.

Integral to the Apanui explanation of their obligations is immersion of material in spiritual, much as Henare describes in the introduction to this section. Connection between spiritual (which we might take as a metaphor for the connectivity humans feel with others (human and nonhuman, animate and inanimate) and the way we should relate to other and the material pervades the Apanui affidavit.[86] Conversely, and in keeping with modern Western tradition, scientific approaches and secular government and institutions, the spiritual and connectivity is completely absent from the Crown's arguments and deliberations and cannot be accommodated by the Court. Riki Gage's attempt to 'educate' the Crown and Court on the complexity and depth of connection, and the concurrent and conflicting obligations and duties Apanui have as ambicultural citizens, must fall on barren ground. Indeed, it is effectively ignored in Judge Gendall's summation (Gendall, 2012: §142-145).

Western: Instrumental Value	Māori: Intrinsic Value
Isolation of cultural (human) and natural (nonhuman) domains.	Human and nonhuman exist within an entangled continuum of immersive (inter)relationships.
The earth is divided into discrete 'spaces'–property–to which material value may be assigned. Relationships to property are described in terms of relationships between people, the nonhuman itself is outside the boundaries of relationship.	Rohe, territory, while described and identified by geographical markers is viewed as a continuous interrelated place integral to culture, spirituality and identity; iwi has moral obligations to the rohe.
Land, sea, waterways, resources, animals and plants are owned, as part of a legal structure of property rights, by individuals or collectives such as corporations or nation states.	Iwi and hapu relationship with rohe rests with the collective not individuals. Ownership of the nonhuman realm is anathema to the ontology; the nonhuman is related as family with human.
Focused in the present and future, and transferrable between individuals (or collectives), legal property rights entitle owners to extract economic value from property with few limitations.	Cultural, political and legal practice is based in custodial obligation to the environment, ancestors and future generations. Custodianship brings duties and obligations to maintain or improve the environmental quality for future generations. It includes obligations to give back to the nonhuman.
Production/harvesting is frequently geared to maximising value/profit/return in the present. 'Compensation' to future generations in the form of technology and intergenerational transfer of monetary wealth is assumed sufficient to fulfil any intergenerational obligations.	Production/harvesting is geared to sufficiency, without a focus on surplus and with obligations to ensure ongoing productivity for the future.
The value of the environment to future generations may be 'discounted' against current value.	The environment, a taonga, maintains constant value through time, past present future.

Fig 4.3: The Value of Nonhuman

---

[86] Here I adapt Jeremy Bendick-Keymer's understanding of spiritual objects (Bendik-Keymer, 2013 12).

Judge Gendall does 'not accept council's argument that [UNDRIP] requires the Crown to have regard to the impact of its activities on taonga without it being informed of Māori concerns during a consultation process or otherwise. (Gendall, 2012: §141)' Despite over 150 years of living alongside each other, despite extensive Treaty of Waitangi consultations and claims, despite repeatedly explaining the philosophy behind *whakapapa, mauri, tapu* and *mana,* the Judge expects Māori to specifically justify why a specific area is *taonga.* His materialist worldview appears to have rendered him cognitively incapable of understanding the universal connection of environment as *taonga* to Māori. His insistence that Māori must repeatedly re-explain their connection to place exemplifies institutional resistance to the validity of Māori philosophy and lifeways and the dominance of property rights in law. It is a clear case of epistemological exclusion (Dotson, 2014).

The introduction noted that there are parallels between Māori connection to place on other Indigenous cultures. So too there are parallels in Anglo-law based courts' failure to accommodate these connections. For instance, the sense of obligation to land expressed by *kaitiakitanga*, also finds expression in Aboriginal culture of Australia, where in 1971 it was held against Yolngu who were seeking to have their land rights respected. The Federal Judge hearing that case argued that the evidence showed that the Yolngu had 'a more cogent feeling of obligation to the land than ownership of it' (Yunupingu, 1997: 4). And he then proposed this 'feeling of obligation' did not equate to the legal construct 'ownership' and denied, therefore, the Yolngu claim to ownership of their traditional lands.

While the resilience of Indigenous culture to centuries of domination and forced assimilation in itself offers a critique of Western epistemology and ontology, the institutions of settler states such as Aotearoa (and Australia), render Indigenous philosophy, in Dotson and Whyte's phrasing, 'unknowable' at the legislative and procedural level. Alternatively, we could say the institutions contribute to entrenched epistemological ignorance within these states. Receptivity to *knowing* and *being* other than Western is severely limited by the structures and institutions of state. Consequently, the opportunity to pursue development within holistic frameworks is curtailed, as is the imagining of IEJ. Importantly for Apanui and others in similar situations, it renders intergenerational Indigenous environmental *injustice* inevitable.

Whereas Māori values place IJ central to environmental decision making, the Western 'materialised' environment, broken into discrete, transferrable asset parcels, available for

immediate extraction of financial benefit leaves little room for the consideration of future generations. It hinders the construction of a coherent IEJ framework. In Aotearoa, it also renders IIEJ difficult to achieve and limits the iwi's capacity to fulfil its responsibilities.

While integral to Apanui decision making, the submissions and affidavit of the MOE show IEJ is cleaved from the MOE's responsibilities. As they (still) talk past each other, Apanui's continuing role as *kaitiaki* is rendered unknowable to the Minister. Dotson and Whyte identify two types of wrongs which may be rendered unknowable:

1   '[A] failure to detect that there is something immoral or unjust in a given situation…[and]

2   Actions that involve "whole communities being placed on the border of collective consideration' (Dotson & Whyte, 2013: 61). It seems here the legal and legislative structures that describe the MOE's responsibilities, duties and procedural boundaries, and guided the High Court deliberations, are exactly these kind of wrongs.

Despite RG's detailed explanation of the principles guiding Apanui's relationship to the environment and their IJ responsibilities, the boundaries of the legal process rendered them irrelevant and unknowable. The Judge was impelled to consider only the process by which the MOE granted to permit to Petrobras. That the process could not accommodate Apanui's life ways renders it unknowable: there is no capacity to detect an injustice in this process.

Under these conditions of unknowability Apanui are denied IIEJ. However, these same submissions from Apanui do grant us access to alternative ways of imagining IEJ which will be explored in greater depth in Chapters 7 and 8.

I leave the last word for this chapter to Dayle Takitimu:

> We are who we are, and we have an inherent right to maintain our way of being. The Government do not need to redefine us, manage us, mandate us or require us to morph into some other being. They need to accept us as we are; as hapu, as Treaty partners. (Takitimu:15)

Chapter 5: You are Never Alone – something more than individual

> …the tension between individual and collective rights so contentious within Western-style societies is dissipated within the integrity of a traditionally based Indigenous framework. In an Indigenous framework, respect for others does not require political or legal uniformity or assimilation to a country but rests on the principle of balance.
> (Stewart-Harawira, 2005: 200)

Kaitiakitanga is an expression of IEJ derived from Māori life ways and 'principles of balance'. Based in recent epistemological and ontological expressions of Polynesian philosophies, themselves adaptations from the ancient Asian roots of Pacific migrations and culture (Int. MH.), the previous chapter explored *Kaitiakitanga's* ongoing importance and expression. It represents one way of balancing the tension between individual rights of the living and the collective rights of future generations. Moving across the Tasman Sea the focus now is on how Australian Aboriginal peoples understand the interaction between individual and collective. Having lived and grown their culture, traditions, epistemologies, ontologies and philosophies in continental isolation from 'the beginning of time itself' (Watson, 2015: 11), Aboriginal Australians are understood to have the oldest continuous cultural traditions. These cultures are unique, multi-faceted, and multi-stranded: each clan group has its song-lines, traditions and variables. There are, however, common threads binding peoples of Aboriginal cultural heritage (M. Graham, 2008; Moreton-Robinson, 2015; Watson, 2015). This chapter explores one commonality; a sense of self derived from community that generates an ethic of custodianship and promotes IEJ. It does so through the lens of *kanyini.*

Kanyini is one Australian Aboriginal 'philosophy'.[87] The Anangu, whose 'country'[88] lies in the shadows of and is dominated by the massive presence of Uluru in central Australia, refer to their life way/philosophy/ontology as *kanyini*, and it is *kanyini* as articulated by Uncle Bob Randall that forms the backbone of this chapter.[89] This Anangu philosophy, in common with

---

[87] In quotation marks not to question the possibility of Indigenous philosophy as others have done, but rather because I am applying a Western word to an Indigenous context, one in which there is a risk of constraining how we imagine the thinking by applying a Western label.

[88] Again not to question the validity of the concept, but quotations indicate the risk of misconceptualising the meaning of country in transliteration between languages and traditions. From here forth I will italicise *country* where it is used in the sense that Australians—both Aboriginal and increasingly non-Aboriginal Australians—use it to denote the traditional lands of groups of Aboriginal peoples, tribes, clans or mobs.

[89] Bob Randall, Anangu, was a *tjilpi* (elder) of the Yankunytjnatjara people, who are identified as one of the 'owners' of Uluru. A musician and 'songman' Randall made a documentary *Kanyini* and that, along with his biography *Songman,* are the key sources for this section.

other Aboriginal peoples', has an expansively interconnected ontological foundation (Bird Rose, 2000; 2011; Coulthard, 2014; Durie, 1998; M. Graham, 1999; 2008). Responsible human beings working within the *kanyini* framework are interconnected through local kinship networks, and to a complex web of ties to human and nonhuman that encompass the continent and all time (Watson, 2015). The good of the individual is determined by the welfare of human, other living beings, and things geo-physical in a past-present-future whole.

In many ways this chapter deviates from the holism of *kanyini.* In doing so I distort the philosophical and ontological foundations of *kanyini,* because 'the community' to which *kanyini* speaks is an entangled set of human-nonhuman relationships that criss-cross the continent, time, the universe and the transcendent.[90] Here the focus is more finely targeted at individualism versus communitarianism. However, because within *kanyini* this creates a false dichotomy, human-nonhuman-transcendent relationships inevitably emerge in the discussion.

Where *kaitiakitanga* contrasts with liberal post-Lockean landholding, value extracting ethics, the principles of *kanyini* are the antithesis of individualism. In the liberal tradition, the individual is privileged (Stewart-Harawira, 2005), a privilege which when combined with the 'presentism' of the property ethic, disadvantages both community and future generations. In contrast, Mary Graham says, 'Aboriginal society is accustomed to looking to the long term, and thinking strategically. A society which has a custodial ethic has to do this' (M. Graham, 1999: 107). Additionally, as with other Indigenous Peoples, in Aboriginal ontology, the self is constituted from an expansive sense of community, and a respect for balance (Alfred, 1999; M. Graham, 1999; Stewart-Harawira, 2005).

Individualism is fundamental to liberal justice. The good of the community as a whole is understood to derive from, and to be directed towards, the good of the individuated human. Individualism, therefore, permeates liberal IEJ. This is problematic for both IEJ and also for Indigenous justice where the good of the community is understood as the base-constituent of individual good. So long as the individual is accepted as the meaningful social unit deriving a coherent and compelling theory of IEJ is difficult. This is not to suggest there are no

---

[90] In defence of the approach, Chapter 4 explored that human-nonhuman and transcendent connectivity too, and Chapter 6 will focus on the obligations that derive from an understanding of immersive relationships with nonhuman, where the self includes all-that-there-is. Chapter 7 ventures into understanding the implications of time's representation as past-present-future. And in Chapter 8 the entangled immersion of human-nonhuman is explored through Māori metaphysical concepts of *mauri, mana and tapu.*

challenges to individualism in the West; there are. This chapter will review the individualism-communitarianism debate, both from within the liberal tradition and with an Indigenous lens. Both Māori and Aboriginal are critical of the individualism of the Anglo-American tradition, as are North American Indigenous scholars (see for instance Alfred, 1999; Coulthard, 2014; Durie, 2010; M. Graham, 2008; Moreton-Robinson, 2015; Stewart-Harawira, 2005; Watson, 2015). It remains an instrument of oppression as this chapter uncovers.

More narrowly, the question here is whether IEJ constructed within the liberal framework is capable of accommodating the idea of self-in-community, as articulated by *kanyini*. Opening with an examination of individualism as a pervasive Western social, I argue that as a foundation to social and political ontology in the settler states, individualism has two effects relevant here. It complicates the lives of Indigenous Peoples through negation of their community-based ontology and limits western capacity to theorise IEJ. It is important to note, however, that individualism is not the only theoretical framework within the Western canon. The chapter, therefore, looks specifically at one of the most-well resolved communitarian articulations of IEJ, that of Avner de-Shalit. Then it holds these liberal frames in contrast with *kanyini*, the philosophy of central Australia. What this exposes are ontological clashes between West and colonised Australian Aboriginal people, even when IEJ is expressed in de-Shalit's communitarian terms. While the Western perspective offers little to Anangu, Anangu have much to offer if we wish to create a 'meaningful and inclusive [intergenerational] global society' (Stewart-Harawira, 2005: 46).

The Anglo-American Tradition of Individualism

> The social ontology underlying many contemporary theories of justice…is
> methodologically individualistic or atomistic.
> (Young, 2011: 45)

> …the last three centuries have seen the growing power of the atomist modes of thought,
> particularly in the English-speaking world, and more, these have fostered the constitution
> of an unreflecting common sense shot through with atomist prejudices. […] Political
> societies in the understanding of Hobbes, Locke, Bentham, or the twentieth-century
> common sense they have helped to shape are established by collections of individuals to
> obtain benefits through common action they could not secure individually. *The action is
> collective, but the point of it remains individual. The common good is constituted out of
> individual goods, without remainder*.
> (Taylor, 1997: 188. Italics added.)

As philosophers Iris Marion Young and Charles Taylor suggest, the individual has a powerful position in the contemporary Western imaginary. The rational, self-defining individual of enlightenment philosophy is 'twentieth-century common sense' (Taylor, 1997). As an ontological foundation for society, individualism argues it is the individual who is best suited to define the good life for themselves. Liberty means each individual is able to strive for their own good life and is equal to all other individuals. The good of society is derived then from the good of the individual and society (in the form of the state) should only limit freedom when an individual limits or interferes with the freedom of another. In this way, society protects citizens from tyrants and domination. An individualist foundation for social ontology is not universal. The thrust of this chapter is to propose that where it is supposed to be universal harms may be done to those for whom community is seen as the source of strength and protection for the person. Further, it proposes even Western *communitarian* ontologies are insufficient to encompass the community of *Anangu* and others. This section, then, is a point of departure for examining Western communitarianism—a necessarily abbreviated review of some aspects of individualist thought.

Hobbes, Locke, Kant, Bentham and Mill situated the individual as the ontological unit of social contract theories (Kymlicka, 1994; Taylor, 1997; Young, 2011). The underlying argument is, freed 'from the chains of social custom and hierarchy' (Kymlicka, 1994: 263), rational individuals voluntarily constitute the units of society, and the laws of society are derivative of the demands of individual psyches. The individual forms bonds of contracted mutual benefit with other individuals and agrees to abide by the shared laws that govern their relationships (Grant, 1988). A conceptualisation of just society, then, is one that protects the rights and flourishing of the individual. Moreover, '[t]he social ontology underlying many contemporary theories of justice…is methodologically individualistic or atomistic' (Young, 2011: 45). The individual basis of political liberalism, while protecting the individual from the pressures to conform to group dictate, limits the theory's capacity to accommodate other imaginaries of human relations. Recent theories rethinking social goods—those within the HR and the CA to justice—continue to translate the good from within the individualistic paradigm (see the works of Martha Nussbaum and Amartya Sen for instance). Michael Walzer suggests that individualistically based '[l]iberal theory now seems to have a power over and against real life that has been granted few theories in human history' (Walzer, 1990: 10).

The early thinkers who framed individualism and liberalism were rebelling against the confines of convention and oppressive hierarchy (MacIntyre, 1984). In doing so they created an exclusionary concept of the person—one in which the individual has freedom to preference their desires and goals, to find and realise their own personal nature, above those of convention or the group. Self-reliance was promoted over authoritarian conformity. Self-reliance and individual autonomy were, through isolation, necessity, and philosophy, grounding principles within the Settler States, where '[t]he language of individual rights [… remains] simply inescapable' (Walzer, 1990: 14). While individual and community are bound, what is important for the individualist is that the individual is protected from the community or society. However, the result is these protections for the individual pose intractable dilemmas

for IEJ. IEJ requires a social commitment to, not protections from, non-existent, and unable-to-be-individualised amorphous communities of future generations.

Within the individualist tradition, generally, individuals are expected to come together as a 'collective' to generate goods they are unable to provide individually—such goods as the military, or police force, or emergency services—the classic collective instruments of the Hobbes-Locke tradition (Taylor, 1997). Otherwise, all being equal, the functions of society are to support the freedoms and autonomy of individual citizens. Individualists exhibit, in parallel to caring for self, antipathy towards what they see as the constraints of social institutions.

Within this ontology, the individuated person has moral precedence. The socialised sense of self is organised around self-perception. The resultant moral and philosophical corollary is the idea of 'the good' rests in the individual: society's role is to support and enhance the good of individuals and protect them from domination and abuse by the powerful. While, for example, Young notes more recent poststructuralist philosophers have exposed the idea of the atomised individual as illusory (Young, 2011), Charles Taylor suggests an individualism/atomism to communitarianism/holism continuum along which people sit (Taylor, 1997). Michael Walzer suggests even when good of community is invoked, '[c]ommunity itself is largely an ideological presence in modern society' (Walzer, 1990: 7). What is important to the argument here is the dominance of individualism in philosophy, politics, and the social imaginary, and its peculiar impacts on IEJ. When the individual is the focus, many issues of IEJ—climate change, toxic pollution, species depletion, etc.—seem insoluble. It might leave an opening for thoughtless oppression of minority groups (Krause, 2015). Future generations are at risk of similarly thoughtless oppression.

More recently, Sharon R Krause has argued the individualist spirit is used by some to avoid responsibilities to marginalised and disadvantaged minorities (Krause, 2015). Where exceptional individuals rise above the norms for their group, it is supposed others can too. But this is, she suggests, to elide the fact that some responsibilities are collective responsibilities, some disadvantage is collective disadvantage. It is insufficient to claim, in the name of individualism, that freedom and achievement are the sole outcomes of individual self-realisation. Similarly, I suggest, it is insufficient to claim the problems of IEJ are individual responsibilities—generally, we could argue our individual acts have little negative or positive impact. It is the combined and cumulative effect of those individual acts that is problematic.

Krause argues for an individualism that is beyond a conception of a tightly bordered, sovereign being, one separated from and distinct from other people. Non-sovereign individualism on this account protects the free exercise of personal agency, that capacity people have to express their will through unhampered action. She argues also, this 'agency is not solely an inner faculty of the individual but an emergent property of intersubjective exchanges' (Krause, 2015: 7). What is important to Krause is that people can affirm their identity through exercise of their freedoms within society. And this requires recognising that, consciously or not, at times this capacity is hampered because as members of a socially

subordinate group they are dominated by others. In this Krause recognises there is a 'complex constellation of causes that contribute to these outcomes' of oppression (ibid: 8). It is important then, that within an understanding of individualism we recognise the dynamics of inter-subjectivity, moving she suggests 'beyond the myth of sovereignty where individual agency is conceived as an internal property of the person and identified narrowly with intentional choice and control' (ibid: 10). But Krause's theory of the non-sovereign individual, while recognising the co-constitution of individual within social relations, remains problematic for Anangu and Māori—and other Indigenous Peoples—for whom community is not limited to human.

George Kateb links individualism and the idea of human dignity (Kateb, 2011). However, he also suggests that the human species (as a whole) has dignity, and in virtue of this species dignity humans have a vital role as stewards of nonhuman. Even though he is writing within an individualist frame, he acknowledges in some sense there is something more than or additional to the individual, the human species. The idea of dignity elevates humanity, Kateb suggests, to 'the greatest type of beings' (Kateb, 2011: 3). He goes on to argue that the human species, not as individuals but rather *as a species*, has dignity. It is the dignity of human as a species that for Kateb 'belongs to the unborn generations indefinitely into the future' (Kateb, 2011: 211). On his account, it is species dignity that underscores IJ.

However, for Kateb this communal dignity, as it were, the dignity of the human species as a whole, is conferred as a function of human separation from nonhuman in virtue of human exceptionalism. This dignity that human has as a species grants a stature that is greater than the stature of other-than-human. This elite stature confers a 'greatness of humanity [that] precedes the equality of individuals' (Kateb, 2011: 6). Our obligations to other-the-human derive for Kateb from our obligations to the dignity of members of the human community. Human are greater-than-nature in virtue of their unique capacities—speech, reason, the mind—and therefore 'the human species is partly discontinuous with nature' (Kateb, 2011: 142). In virtue of human dignity, the human obligation is as 'the steward of nature.' (Kateb, 2011: 142). Indeed, he suggests human alone are capable of this stewardship. So while Kateb argues for a form of value in community, a value that carries through to future generations, it is the individual *human* to whom the principles of justice apply. Kateb's position is illustrative of how human exceptionalism continues to pervade the Western tradition, even if it moves beyond classic individualism.

Kateb confers dignity to the human community, present and future, however, he resists the idea of dignity in the human species as a whole. That he claims, may undo the advantages equal status brings to individual wellbeing and stature. So, at least on Kateb's account, whilst dignity is an appropriate base to human species justice, and arguably IJ, it is only in the sense that it confers just outcomes for individual human beings. Such a position is unable to accommodate the demands non-individualistic social constructions, nor one which assigns subjective rights to individual and collective nonhuman.

Two key problematics arise from individualism in politics and social imaginary that are important for a theory of IEJ. First, IJ becomes tangled within the non-identity problem (Parfit, 1984, pp. 351-379: see). By focusing on 'the good' as 'individual goods', Derek Parfit poses a particular challenge to developing a cohesive theory of IJ—and his challenge has taxed theorists for the past thirty years. Briefly, the non-identity issue focuses on the reality that if we cannot 'identify' the individuals who will live in the future (those individuals whose being is contingent on the many choices we make within present moments of time) we, the living, have no 'one' with whom to form contractual bonds of obligation and duty. That is, we cannot have obligations to non-identities, so we cannot harm 'them'. Moreover, the actions we take today play a part in determining the existence of those very human identities. Even if their lived experience is worse than the lived experience of other people who would have existed had we made more ecologically conservative decisions, that harm is mitigated by the good of existence, the very existence our behaviours in the now determined. The 'logical' conclusion to an individualistically based philosophy, Parfit argues, is that we do not, and cannot have a coherent theory of IJ.

The second issue with individualism, in the cultural contexts of both the previous chapter and this one, is that there is an ontological disconnect at its core. In giving pre-eminence to the (human) individual as the most significant social unit, individualist liberal theory ignores the reality of *peoples, communities, cultures and collectives of people* and *all nonhuman entities and their interconnections*. It is *the individual living human person* only to whom consideration accrues. It is a social imaginary in which it is understood a fulfilled individual is the positive outcome, and main concern, goal, or focus, of social cohesion and communal relations.[91]

As Krause suggests, 'freedom for some has so often come at the expense of freedom for others' (Krause, 2015: 191). She advocates that we should look at individualism as part of an ongoing project, that, '[w]e redeem our freedom by making our past and our present meaningful parts of a progressively unfolding narrative toward freedom for all' (ibid: 191). In this, she appears to describe an intergenerational project in which individualism should protect diversity and the freedom of members of the political community, constantly alert to the dangers of either long-term or emergent domination and oppression. To do that it is insufficient to protect people behind walls of non-interference and non-domination. If freedom is the goal of liberal philosophy, we must act as both individuals and as joint members of society to ensure the agency of no category of persons is thwarted. Above all, though, the project is directed at supporting 'individual aspirations' (ibid: 192).

---

[91] I note and acknowledge the difference of scale and social organisation within the social units under discussion. The individualist liberal tradition emerged from, and exists within largely urbanised, complex, multicultural states. Aboriginal and Māori social structures are organised around much smaller units within which there are strong familial bonds and historic connections. Individualism evolved to resolve in part a set of social issues traditional Aboriginal and Māori had not encountered before colonisation. That said, however, the communitarian outlook of both has remained strong and important to people's identity.
I return, therefore, to the two key issues, does individualism oppress groups such as the Australian Aboriginal and Māori and is it an impediment to IEJ?

Kaitiakitanga, as we have explored, establishes a set of intergenerational communitarian protocols. Its underlying premises rest in understanding life as an entanglement: human with human, human with nonhuman, nonhuman with human, human and nonhuman with transcendent. It does not conceive of an individual sitting outside of the entanglement, nor somewhere along a continuum of individual to community. What is important here, and within *kanyini, is* the entanglement. It is the strength and 'aspirations' of the whole that must be upheld. So while Krause and others focus on the individual, alert as they may be to cultural and minority domination, the door to accommodating ontological entanglement appears resolutely shut.

Alasdair Macintyre suggests that '[w]hen the distinctively modern self was invented … [w]hat was then invented was the *individual*' (MacIntyre, 1984: 61). While widely accepted in the settler states, and perhaps distorted by popularism and consumerism to appear to embrace an extreme bounded exclusionary imaginary, individualism is a comparatively new concept, one which arose to meet the demands of a particular set of social conditions within the West. There are, however, also theorists within the Western liberal tradition who reject the individualist approach. It is to communitarian justice theory to which the next section turns. Can communitarianism form an effective framework for IEJ and for decolonisation of the theory?

Communitarianism

> Group categorisation and norms are major constituents of individual identity.
> (Young, 2011: 45).

> American communitarians have to recognize that there is no one out there but separated, rights-bearing, voluntarily associating, freely speaking, liberal selves.
> (Walzer, 1990: 15)

An individualist social ontology is not the social ontology of *kanyini*. Nor can an individualist social ontology meet the protocols and obligations of *kaitiakitanga.* Despite theoretical claims to universalism, the foundational concept of individualism is simply not universal; indeed, in a global context, it may not even be the dominant social ontology (Sampson, 1988). Anangu no more than Apanui regard the individual as the unit of being. Wellbeing in both is derived from extensive interconnections and community: human to human, human to nonhuman, nonhuman to human. Each member of the societies is concerned not only for themselves but accept also communal responsibilities to past, present and future generations, and nonhuman including individual and entangled components. Both Apanui and Anangu have a clearly communitarian socio-political structure. However, the expansive entanglements of the 'community' mean even a communitarian approach to IEJ based in Western premises is insufficiently expansive to encompass this worldview. Human remains privileged.

The remainder of this chapter will explore ways of being constituted of a non-exclusive community, and the effect that has on how non-individualistic peoples conceptualise

obligations to future generations and the environment. Starting with Western communitarianism in general, it then looks at the communitarian theory of intergenerational justice (CTIJ) developed by Avner de-Shalit, an environmental politics scholar, in response to the weaknesses in individualistically based theories of IJ. Later it tests CTIJ against *kanyini.*

The communitarian description of who a human is, and how self is constituted, suggests that we draw identity from community. That is, unlike the atomised individualist conception of the self, a person is understood to arrive at an understanding of who they are, their purpose, and importantly for theories of justice, their obligations and responsibilities, from their community. The boundaries between the self and other, are then, fluid (Sampson, 1988). Rather than discrete and exclusionary, the self understands its being in the context of a community narrative. Alasdair MacIntyre argues that being human is to be immersed in 'action and practice, as well as in … fictions' (MacIntyre, 1984: 216), in story-telling. He suggests the source of our understanding of self and what we must do comes from the understanding of the communal stories of which we are a part. 'I am never,' says Macintyre, 'able to seek for the good or exercise the virtues only *qua* individual' (MacIntyre, 1984: 220). Michael Sandel argues 'the liberal account of obligations is too thin' (Sandel, 2009: 224). What is missing, he says, is acknowledgement that as an individual we are part of something bigger from which we draw. We are citizens. Citizens as co-travellers have special responsibilities to each other. As members of something—family, clan, nation—humans are 'bearers of ..history' (Sandel, 2009: 224). And we project ourselves into the future, for;

> [t]here is no present which is not informed by some image of some future and an image of that future which always presents itself in the form of a *telos*—or a variety of ends or goals—towards which we are either moving or failing to move in the present. (MacIntyre, 1984: 215-216)

IJ then grows from the continuous community narrative and story-telling, into which the living project the image of their life projects and from which they constitute their present.

Avner de-Shalit draws from the communitarian tradition to build CTIJ. 'A genuine community', de-Shalit claims, 'as opposed to other social groupings, is one in which the members regard the ideas of the community as constitutive of their identity' (de-Shalit, 1995: 24). In these configurations, a person, an identity, is constituted of unique qualities and identifiers. Additionally, they draw on their community to develop that understanding of themselves. Community supports who they are. Like other communitarians, his argument is that an identity cannot claim to be entirely self-constituted, and some obligations are generated by the good the person gains from those around them.

De-Shalit posits that, as members of an intergenerational community, the living imagine that community will continue to exist—constituted in story-telling to use MacIntyre's argument. Therefore, those living have normative obligations to future generations of that community. And his concerns are particularly focused around obligations to protect natural resources for the welfare of future generations (ibid.).

Recognising the constraints individualism places in a construction of IJ de-Shalit proposes that 'utilitarian, contractarian and rights based theories fail to provide justification for our

obligations to future generations' (ibid.: 11-12). He suggests instead that '[o]ur obligations to future generations derive from a sense of a community that stretches and extends over generations and into the future. Part of what a transgenerational community stands for is the idea of obligations between generations' (ibid.: 14). He is particularly interested in the possibility of obligations and duties to a 'transgenerational *community* that stretches and extends over generations and into the future' (ibid.: 12), and develops a ''communitarian' theory of IJ, which is based in human beings seeking a moral environment transcending self-interest' (ibid.: 12). This moral environment draws attention to obligations to pass to future generations an environment, and environments, conducive to human wellbeing.[92]

De-Shalit suggests that to create a theory capable of generating IJ 'we should look for the moral and political debate and its two main components: reflection and the search for moral similarity' (ibid.: 31). Theories that focus on the individual as the unit of justice, however, paralyse our conceptualisation of IJ and EJ. Basing his account on 'reflection' he suggests humans project themselves into the future—through family, the survival of our works, how we shape society and contribute to it.[93] Our being is part of a transgenerational project: the I I am now is constituted of the I that was and the I I am projecting into the future (even if that I is not fully realised) and there is a 'thread that connects them in time' (ibid.: 37). The future, after our death, is not of ourselves, but of aspects of our life projects; so he argues the future can be regarded as part of ourselves. 'By this', he argues,' we can enlarge our conception of our 'self', our identities: we involve in it future objects—human and nonhuman—that are part of us. And by this we mitigate—at least to some extent—our fear of death and mortality' (ibid.: 40). But this seems still a very individualist project.

When reflecting then on our fear of death—our personal fear—de-Shalit acknowledges the indisputable. Human are individual beings. However, his argument differs from individualists (as do those of other communitarians) in that this individual is not understood to precede community. The community both precedes and continues after the individual. On the communitarian account, it is 'from the communities and traditions that [individuals] shape [their] identity' (Sandel, 2009: 220). The individual constitutes identity from and projects ideas and plans onto a community that will continue with new people. These future generations of people will themselves draw goods from the continuation of the social order. In that way, self-reflection, the projection of ideas and plans, identify human continuity with contributions to the future.

De-Shalit does not stop with self-reflection. He extends his normative argument to a more expansive community-based foundation. Having identified the individual is embedded in and constituted by community-based relationships and projects, he suggests that the only valid

---

[92] The distinction I am drawing here is between a global environment, the meta environment as it were, that includes atmosphere, seas, land, flora and fauna acting in responsive concert, in which everything is immersed and more localised, micro-environments, with which a person or persons has close daily contact and interaction, in which they are embedded.

[93] John O'Neill reflects on this survival of works as he mounts the case for justice for the dead, for our ancestors (O'Neill, 1999).

process of cultural interaction is one that extends into the future. That is, many of our present projects are ones we design as future-oriented, to provide value and worth to future generations, beyond our lifetimes. Nonhuman artefacts, buildings, infrastructure, and art are obvious examples, as are projects to promote national identity and the desire to see a culture perpetuated. This is a community with which we can identify: one with which we share a 'history of cultural interaction' (de-Shalit, 1995: 23). People in such a community, de-Shalit argues, 'undergo the same political, social, and cultural experiences; they reflect on and interpret the significant events through discussion, literature, mass media, academy research, and so on' (ibid: 23). What is more, he argues, artistic outputs 'become common property' (ibid: 23). The community to which de-Shalit refers is that in which we are each intimately, closely embedded. De-Shalit's community is human and culturally similar.

De-Shalit makes six comments (or claims) about his CTIJ (ibid.: 123-137). Firstly, the source of obligations to future generations is located in ourselves, and we must take responsibility for providing an environment in which they can flourish. He claims the living, as members of a transgenerational community, must take responsibility for the environment. It is a reflexive responsibility.[94] Secondly, CTIJ releases us from a dependence on 'impossible information'. It doesn't pretend or aim to be neutral.[95] Without foisting particular conceptions of 'the good' on future generations, it leaves open access to 'goods'.[96] Thirdly, locating IJ in community releases us from the ontological problems that Parfit identifies encumbrance person-affecting theories and with which individualists struggle. Because we are not grappling with the particularities of individuals, the non-identity issue dissolves. Which leads to his fourth claim that CTIJ is not atomistic and can, therefore, critically, include future generations within the current community: the boundaries of self are intergenerationally fluid.[97] Time neutrality is the fifth claim—CTIJ does not discriminate against someone just because they will be living in another time. Finally, he focusses the content of obligations to future generations, claiming CTIJ releases us from the need to know their preferences since all we need to understand are our own preferences. The obligation is not to leave individual goods, but rather a '*package* of objects' (ibid.: 130), from which future generations can constitute their 'goods'. Such a package should include 'natural resources, achievements in art and science, technology, knowledge, values, financial resources' (ibid.: 130). What is important is that firstly and unusually for IJ theory, de-Shalit addresses this whole range of problems and identifies a totality of goods on which the IJ is contingent. Secondly, his theory is not necessarily culturally dependent—the 'package of objects' may transfer to any culture.

Charles Taylor claims, '[s]ome things have value for me and to you, and some things essentially have value to us. That is, *their being for us enters into and constitutes their value*

---

[94] Richard Hiskes also argues that intergenerational environmental justice is best conceived as a reflexive obligation (Hiskes, 2005; 2009).

[95] Thereby, relieving us of the problems Ball identifies that result from steady cultural change and the transformation of values over time (Ball, 1985).

[96] And here again we have the concept of reflexivity, similar to that expressed by Hiskes, that what is good for future generations is frequently good for the living.

[97] This intergenerational fluidity is something I will return to in detail in Chapter 6.

for us' (Taylor, 1997).[98] This seems also to be de-Shalit's claim: when atomistic individualism is the ontological foundation we cannot constitute that which is of 'value for us', including justice for future generations, or justice within communitarian cultures. This recognition that the boundaries of self flow into being with and constitutive of other—both immediate significant others, and the others who constitute our community now and across time—makes it possible to extend obligations and duties to future generations of our community. Understanding ourselves as fluidly connected to others is to understand ourselves as self-in-community. On this account we, humans, are part of a bigger project than the atomised individual must reckon with. On this communitarian account, we have obligations to future generations because of what society affords—gifts—us, and because future generations are a part of this bigger more fluid us. This is not to imply that the individualist is deliberately negligent. Parfit, for one, indicates we should consider future generations, he just cannot find a way to conceptualise IJ within the individualist paradigm. Indeed, both types of 'persons can and do act in socially responsible ways. In the non-contractual, communal form, however, responsibility does not issue from a firmly bounded self-acting on the basis of self-interest, but rather precisely because one is not defined' (Sampson, 1988: 20). Positive obligations and duties are then extended outwards, to others within the society from which we draw identity. And, because they are not attached to a single, identifiable individual the duties and obligations may extend to contributing positively to human lives in future generations.

This understanding of self, constituted of community, focuses in the present, *and* into the future in that the future contains the continuation of our projects. It is drawn from the narrative, the conversation, we establish between our 'self' and those around us, and the shared vision we have for society and the artefacts of that society. Unbounded, we are able to visualise a contextual being-ness of shared interests and values. When self-interest is not the primary driver of human endeavour, it is possible to imagine decisions based in the good of the wider intergenerational community—one from which not only one's own good but that of others flow.

The domination of the Anglo-American conceptualisation of hyper-individualism has made the ensemble individual, and communitarian IJ, *appear* outside the norm. It is, however, the norm for Apanui and, as we will see, the Anangu people of Central Australia and others. Obligations and duties run on de-Shalit's account from the present to the future. IJ is understood as something we owe people of the future. As we are drawn now to consider whether in the context of IIEJ, de-Shalit's CTIJ is a workable model, in addition to the basic differences between individualism and communitarianism, this forward-focus is important to remember. Here the question is whether de-Shalit's CTIJ is able to include the practices of Māori and Anangu, or others who share similar ontologies.

---

[98] Kai Nielson makes virtually the same claim: '...there are some things that essentially have value for us. We cannot have them individually. Their being for us, and not just for you and just for me, enters into and constitutes their value for us' (Nielsen:2009: 61).

Kanyini: An Aboriginal Philosophy

> Aboriginal people have a kinship system which extends into land; this system was and still is organised into clans. One's first loyalty is to one's own clan group. It does not matter how Western and urbanised Aboriginal people have become, this kinship system never changes. (It has been damaged by, for example, cultural genocide/Stolen Children/Westernisation etc., but has not been altered substantially.) Every clan group has its own Dreaming or explanation of existence. We believe that a person finds their individuality within the group. *To behave as if you are a discrete entity or a conscious isolate is to limit yourself to being an observer in an observed world.*
> (M. Graham, 1999: 106)

Born of the *country* of central Australia Bob Randall was *Anangu*, son, brother, husband, father, and a *tjilpi* (elder) of the *Yankunytjatjara* people, a member of the 'stolen generation', a singer/songwriter, public servant, businessman, educator, and activist. His philosophy (that of his clan,*Yankunytjatjara*) has been rendered in his songs, his autobiography *Songman* (Randall, 2003), an article for *Resurgence & Ecologist* (Randall, 2007)*,* and the documentary, *Kanyini* (Lee, 2006). These sources form the foundation for the analysis in this section, supplemented with, and cross-referenced against the writings of Aboriginal philosophers and law experts. Epitomising the concept of ambiculturalism, Randall was as conversant with the protocols and procedures of his own culture(s) as he was with that of the dominant Anglo-Australian one. At home in the world of *Yankunytjatjara* custom and law, and also that of his adopted northern Australian 'families' the *Iwaidja* people of Corker Island, the *Gunwingku* of Western Arnhem Land, and the *Gupapingu* of Elcho Island in eastern Arnhem Land, he worked also within Anglo-Australian institutions. It is the philosophy of his blood kin, the *Yankunytjatjara* people, from which he talks.

The philosophy of self-in-community of the *Yankunytjatjara* people runs through the philosophies of other Australian Aboriginal clans, language groups, and nations. It *appears* to be common to them all, however, as this analysis does not cover all aboriginal clan or kin groups, I cannot make that generalisation with certainty. Aboriginal philosopher Mary Graham observes, '[o]ver vast periods of time, Aboriginal people invested most of their creative energy in trying to understand what makes it possible for people to act purposively, or to put it another way, *what is it exactly that makes us human*' (M. Graham, 1999: 111)*. Kanyini* as *an* expression of what it is to be human. It is both an ancient and extant life way. *Kanyini* is formed and framed by an ontology within which neither liberal individualists nor de-Shalit has resonance. The temporal dimension of this philosophy explicit includes the understanding that past flows into and is part of present, and both are part of future. The individual is constituted of community, which as we have seen de-Shalit and others accommodate, however, this community includes ancestors, the living, future generations, of human *and* nonhuman kin. That is the nonhuman kin are *of* the community.

Randall's ambiculturalism facilitates his critique of individualism (and other Western values) from within and by comparison. It is a critique he undertakes at times with apparent bemused bewilderment. He offers more than mere critique, however. While reflecting on

Anglo-Australian lifeways, contrasting them with those Aboriginal philosophies with which he is familiar—in which he has been immersed—he offers a counter-narrative, an alternative vision of how we can be to be responsibly human. Within the *kanyini* framework, the boundaries of being and responsibility are expansive and all-encompassing. 'We practise *kanyini*,' says Randall, 'by learning to restrict the 'mine-ness', and to develop a strong sense of 'ours-ness'' (Randall, 2003: 24). An 'ours-ness' based not so much in a theory of practice but in practised theory thousands of years in the making. Randall offers both critique and comparison, particularly in the documentary, as an ontological gift.

In both biography and documentary, Randall *locates* himself first. Not through an autobiographical sum of achievements and accolades familiar in Western individualists. He doesn't introduce himself as educator, singer/songwriter, activist, public servant, businessman or even as *tjilpi*. Randall the individual is located first as member of a clan, *Yankunytjatjara,* as kinsman and family member connected to ancestors, the living and future generations, in *country*, within his physical locale, within the land and earth and associated with flora and fauna. He locates himself in-place, and within an intergenerational context.

Randall's place, his *country*, is not quantified by measure, but described by feature, points of magnificence, by earth's colours and plant species. This place exists through all time, and in it human exist through all time. Here he walks with his ancestors, stepping with respect on his mother, earth, caring for everything within the place for the good of those to come. His location devices are the antithesis of clinical scientific cartographic measures of degrees and minutes. It is clear if we are to know the man we must equally know two fundamentals: the clan to which he belongs and his kinship relations past present and future; and the physical space from whence he comes. The clan and that place determine who he is. The boundary between man, kin, time and place is a zone of fluid interchange, blending one into the other in an exchange of love and giving, care and guardianship. In his *Yankunytjatjara country*, 'it is', he says, 'as if one can feel the very heartbeat of mother Earth, herself' (Randall, 2003: 2).

Tjukurrpa is creation, the beginning 'which we need to keep alive in the present' (Randall, 2003:17). While there is only now, now exists contemporaneously with past and future. The past is not gone, but rather integrated into that which is present with the anticipation that that integration will fold into it the present as future time becomes present. 'The creation period', says Randall, 'is not something that just existed in the past. To us, it is also part of the present and will continue to exist in the future' (Randall, 2003: 17). Irene Watson, drawing from the ontology within which she grew and from other Indigenous Peoples, puts it this way:

> *Kaldowinyeri*, or time long ago, in the beginning, is also the time now, and time in the future. The beginning, the present and the future encircle the place of *Kaldowinyeri*. The Nunga 'I am' is not like the other, dominant Western subject of being, which is represented by a straight line of thought—beginning, middle and ending. Instead, a Nunga process encircles; within there is a process that allows a person to become one and to begin again. This process is non-hierarchical and non-linear; rather, it takes the form of a cycle, of the continuity of being, becoming another cycle, nurntikki. (Watson, 2015: 16)

While Randall is an individual, his individual being is possible only within the context of clan, kin, family and *country*. His identity is attached to the identity of the whole. His personal stories are twinned with those of his people. His pain is the pain of them all. His decisions and actions, his values and responsibilities are bound by commitments to the good of, and for, his wider networks. The portrait Randall paints of himself is a portrait of extensive relationships that are as much who he is as is his physical individuation. The whole that he is is the sum of relationships. He makes clear the decisions he makes benefit him *only* if they simultaneously benefit this whole.

In this, he is surrounded and supported by connections. '[B]y having … many mothers and fathers, sisters and brothers, and other relatives, including those who are not human beings, we experience our world as one of being completely surrounded by family, and so our system of *walytja* [kinship and family] is very vast' (Randall, 2003: 24-25). This connectedness is expressed through *kanyini* as caring and responsibility to human and nonhuman alike, to living and non-living, earthbound and celestial. The responsibility and care are core to Law, philosophy, and religion (*tjukurrpa*), *country* (*ngura*), kin and family (*waljtja),* spirit, soul and psyche *(kurunpa)* (Randall, 2003; 2007). Similarly, when describing the connectivities of the people of *Yarralin* in the Northern Territory, Deborah Bird Rose observes, '[t]here is no single isolated unit within this description of connection. Each person, each individual is more, part of and related to, a range of networks of other, of 'system(s) of social categories' (Bird Rose, 2000: 74).

The tendrils of commitment extend beyond the intimate connections of blood kin and family. For instance, they include the welfare of Randall's wife's former husband. Early in his relationship with the woman who was to become his second wife and who was at that stage still technically married, Randall approached the husband to seek assurance that that marriage was over. After receiving confirmation, it was, Randall proceeded to explain the ongoing commitments he would bear.

> I told him, 'I'll be taking your wife away if she wants to come with me and, according to my ways, I will be responsible for your wellbeing as well.' 'What?' he said, in complete amazement. 'Yes,' I told him, 'That's our Law. You will be in a brother relationship to me and I've got to look after you, as well as look after this wife of yours.' They were from the south and did not know the ways of the north. […] Divorce for us does not create a hard line of separation. (Randall, 2003: 137-138)

Randall's range of clan commitments went beyond his birth clan in other ways too. Not unusually for one of his time, Randall was a member of the 'Stolen Generations'. Like thousands of Aboriginal children, he was taken from his mother(s), kin and clan, and transported miles from his place in Central Australia, eventually arriving in the Northern Territory. Housed with other youngsters also torn from their people, there he was schooled, trained and put to work. This wrenching from family, kin and *country* Randall describes as an attack to his psyche, his *waljtja*. How could he remain complete when removed from that which made him who he was?

He describes his time on Coker Island, where he was eventually sent, as 'a blend of two cultures' (ibid: 56). In the camp, his life was governed by the 'white missionaries and church workers', while his private time was spent with the local *Iwaidja* people. He was adopted into the family, and becoming an *Arrapi* Aboriginal of Arnhem Land and thus his circle of being extended into Iwaidja. Ironically given the 'point' of taking Aboriginal children from their families was to prevent them identifying as Aboriginal, he now extended his identity to two Aboriginal cultures—he became able to walk with dignity and confidence in two Aboriginal cultures and the Anglo-Australian culture the missionaries were enforcing. Later, his connections within the Territory expanded to the *Gunwingku* of Western Arnhem Land and the *Gupapingu* of Elcho Island in eastern Arnhem Land.

The point I make here, and that Randall makes in his book, is that this ambiculturalism is something more than just a cultural comfortability and more than just an understanding of protocol and procedure. He came to *be Iwaidja, Gunwingku*, *Gupapingu* and *Yankunytjatjara.* His *being* was tied to the being of each clan, kinship group, and family of which he was a member. His commitments and responsibilities, his thoughts and actions, were associated with, embedded in those of others, part of the whole, the totality.

This totality is something more than the living alone. The totality includes and entwines with those gone, the ancestors, and those yet to come, the future generations. Being in the present includes being in the past and future. The referents for self, weave what was, is, and will be, in inclusive loops. A cycle of continually updating strategic being capturing spirit, creator beings, human, animal, plant and land. 'Cycle is a continuum always, to become another, returning to its beginning, past, future. This process cannot be changed or extinguished, it is the law. It can be extinguished in the minds of humanity but it continues to exist in the reality of our natural world and those who live within it and in accordance with its laws and balances' (Watson, 2000: 10-11). 'I am,' she says, 'born of the land and a time before, here now and moving into' (ibid: 67).[99]

The totality includes more than the (merely) human. It extends out to trees and plants, to animals and landform. At birth, each child is assigned a relationship (a skin type or totemic link) to one or more plant or animal species—a practice described in detail by Deborah Bird Rose—which creates kinship ties, reciprocities and responsibilities between human and nonhuman, and across clan boundaries. All those assigned to the same 'skin type' bear responsibilities to the plant or animal of that type and all people who belong to it (Bird Rose, 2000). This set of relationships then extends across the continent. Traditionally, through the range of blood kin, family, skin or totem groups, animal, plant, land and skies, ancestors and future generations, '[e]very Aboriginal person had a place at some intersection within the kinship network which extended over the whole of Australia, and every intersection within that grid was anchored, eternally, to some point on the landscape by the relationship with the Creator Being ancestors' (M. Graham, 2008: 108). The webs of relationship, the boundaries

---

[99] Chapter 7 is devoted to understanding time as a cyclical or spiral concept in contrast to the Western linear projection.

of self and identity morph outwards to encompass the universe. These webs too form the context for Aboriginal epistemology (Bird Rose, 2000: 82).

Randall describes curling to sleep on the sands, wrapped around by the warming body of his mother. 'Hearing the heartbeat of mother Earth' with nothing between them and 'the wind, the heat and the cold, or the sounds of the birds and insects' (Randall, 2003: 3). Adapted to the ebb and flow of *country*, and learning from it the laws of existence and wisdom (Watson, 2000), the Aboriginal understanding of their commitments is comprehensive. 'The key to aboriginal wisdom is,' says Randall, 'family. Treat every being as you would your mother, your sister, your father, your brother. All creatures – humans and other than humans – are family. That is what has kept aboriginal communities strong, despite all the treatment we have endured' (Randall, 2007). This is a hugely expansive ontology. Unlike the atomised, infinitely in-ward, smaller and smaller units of Western philosophic and scientific endeavours, we witness here an all-embracing ensemble wholeness, an embrace of entwined and entangled being. Human is neither set aside from nor above the 'other than humans': human and nonhuman are kindred. This conceptualisation is integral, too, to *whakapapa.* The focus is on how a community of selves-in-community constitute themselves and their social, environmental and intergenerational obligations.

'*Kanyini* is the principle of connectedness through caring and responsibility that underpins Aboriginal life, linking four main areas of responsibility: *tjukurrpa* (philosophy, Law and religion), *ngura* (country), *walytja* (kinship and family) and *kurpuna* (spirt, soul and psyche)' (Randall, 2003: 16). *Kanyini* is a way of knowing responsibility, love and care for a web of interconnection that includes everything. It rests within an immersive, interconnected ontology and epistemology that extends the fluid boundaries of self and community beyond the anthropocentric. This 'community' is not *just* a human community: this community is universe. Damage, disrespect, or destroy any part and the whole is weakened.

As legal scholar Irene Watson describes it, there is no separation of human and other, no division of cultural and natural laws; all combine. The '[I]ndigenous views on human rights and the law are entwined and inseparable from our natural environment. The over-riding idea is a love of the land, a relationship of custodianship between the land and the [people of that land]' (Watson, 2000: 15). Self, community and land merge and the primary human responsibilities are 'respect, honor, sharing, caring and love' (Watson, 2000: 13). Randall stresses that a break to any element of *kanyini* is an assault on the psyche. It weakens and diminishes the being of the Aboriginal person. Without the totality, the individual is not whole. The nexus and integrity of *kanyini* depend on the integrity of all elements. Throughout his discussions the threads of *tjukurrpa, ngura* and *kurpuna* are woven to support *walytja.*

> *Walytja,* our system of family relationships, is the thing that holds Aboriginal society together. We live it out in our relationship to immediate family members, but also to our wider kinship connections associated with our totemic links, to the people with whom we have done ceremony, and to the people with whom we share country. It is also important to realise that we don't just limit this to people: we use the *walytja* way of thinking to relate to everything in our environment. (Randall, 2003: 136)

Here I will keep the focus on what Randall refers to throughout as '*ours-ness*', we'll save the more-than-human for the next chapter.

Aboriginal Philosopher Mary Graham explains that it is much easier to be an inward-looking individualist. To think only of self is the starting place of infants. 'Ours-ness' must be learnt, must be practiced and constantly reinforced. She says,

> The Aboriginal understanding posits that the tendency to possess is more deeply embedded in the human psyche than is the tendency to share. In other words, possessiveness is a more 'primitive' mode of behaviour than sharing or altruism; possessiveness precedes altruism and it therefore takes a higher order of abilities to maintain 'sharing' behaviour than it takes to demonstrate possessive behaviour. Possessive behaviour is asserted or exhibited spontaneously and unreflectively. Sharing behaviour has to be inculcated in the first place and then 'maintained'. It involves such abstract concepts as 'reciprocity', 'strategy', and above all '*community*'. (M. Graham, 1999: 112)

Thematic in Aboriginal lifeways/philosophy, as expressed by *Kanyini* and running through stories and myth, the law and sociology from Aboriginal clan and language groups, is this outward-looking, inclusive expression of what it is to be human, and how to live a good life. Where the Western locus centres on the individual and possessions, *Kanyini* creates webs of important value-laden relationships between people with dynamic threads of interconnection and co-responsibilities. Self and other interpenetrate in a constant search for equilibrium. Graham identifies the two important relationships in Aboriginal life: the first 'between land and people and, secondly, amongst those people themselves, the second being always contingent on the first' (M. Graham, 2008: 182). For this reason, she says, '*you are never alone*' (ibid: 182, italics added).

The Aboriginal evolved a life way in which the individual is encouraged to actively encounter other, to seek evidence of connection and love and to accept the responsibilities associated with considering others. 'We practise *kanyini* by learning to restrict the 'mine-ness', and to develop a strong sense of 'our-ness'' (Randall, 2003: 24-25). Randall discusses his commitment to sharing, including the benefits he got from paid employment.

> Having all this money meant that I could now buy loads of food and look after many of my people. I could begin to recover kanyini. That is an Aboriginal thinking. We have never considered looking after other people a problem. It has always been part of our way of living. Anyone can come asking for money or for a ride or for food and we just give it to them. If we don't have it we'll say, 'Sorry, I've got nothing.' Everyone knows that is the truth because, if we have it, we'll give it. (Randall, 2003: 79)

So while the individual is the unitary being, a being is strengthened and empowered by and in relationship to a broad and expansive web of other. Ego has little place in this self-understanding. 'The reflective and questing Aboriginal mind,' says Graham, 'is always aligned with what everyone in the group wants, and what everyone wants is to understand ourselves in order to have and maintain harmonious relationships' (M. Graham, 2008: 184). And those relationships expand back and forward through time, through human and nonhuman, terrestrial and celestial, physical and spiritual.

How one views the embodied self is both cultural and culture-making—a complex interplay is at work. What is clear is that there is not 'one way', not one that is superior to the other, just different ways of being in the world. For my purposes, it is important to consider how the different ways of being hinder or promote IJ, EJ and Indigenous justice—and their intersection, IIEJ.

Discussion

> What Aboriginal people have done is to map the great repertoire of human feeling to such an extent that its continuities with the psychic life of the wider world become apparent; Aboriginal Law is grounded in the perception of a psychic level of natural behaviour, the behaviour of natural entities. Aboriginal people maintain that humans are not alone. They are connected and made by way of relationships with a wide range of beings, and *it is thus of prime importance to maintain and strengthen these relationships.*
> (M. Graham, 2008)

> Everything living is family. The trees are our family. The same with the kangaroos, emus and all the other animals that live with us. Growing up with the oldies, our parents, the grandparents, they always said we are connected to everything else and the proof of that is being alive. Being alive connects you to every other living thing that's around you. You're spirit, you're psychic, you're physical, you're mental, you're all connected with other living forms. You're never lost and you're never alone. You're one with everything else that is there. The oneness, the completeness of the oneness.
> (Lee, 2006)

It is likely to be clear, now, that individualism, and the identity problem, are deeply culturally embedded. It also appears IJ is improbable if the 'true' human condition equates with tightly bounded, self-seeking individuals for whom responsibility is first and foremost for self. Under conditions in which personal freedoms, self-control and autonomous functioning are prized, the ultimate good is the individual's life itself, even if future individuals' lives are suboptimal. Parfit's analysis shows that where the focus is on rational self-optimisation freed from social constraint, theory shackles current attempts to address global environmental destruction. So an individual-based ontology may be incompatible with IEJ. It is unequivocally incompatible with *kanyini,* the Anangu philosophy of care.

There are two ways in which the liberal reification of the individual asserts mastery over future generations. Firstly, so long as individual freedom represents the apex of worth, any actions that might limit such freedoms are viewed with suspicion. This is problematic when solutions to individual acts of pollution, greenhouse gas emissions, resource depletion, topsoil erosion, etc., demand community-wide action, and restrictions on individual activities. Secondly, because future generations are not and cannot be individually identified, there are theoretical problems in imaging to whom the living have obligations and duties. Furthermore, theory, as Parfit shows, is further complicated when considered and random acts in the present determine who will exist in the future and the nature of the world into which they are born. This worldview is anathema to Indigenous people's worldwide (Alfred, 1999).

Sharon Krause theorises a non-sovereign individualism—one in which she claims we can '[r]edeem our freedom by making our past and our present meaningful parts of a progressively unfolding narrative toward freedom for all' (Krause, 2015: 191-192). These forward-looking obligations require taking both individual responsibility and working together she says. Importantly, she argues that the freedom of the individual 'need not rest on the mastery of others' (Krause, 2015: 192). This claim is important to any theory of IEJ. Where duties are to identifiable individuals only, as Parfit argues, the mastery of future generations is inevitable. Environmental harms will limit their freedoms. Additionally, decolonising IEJ requires that Indigenous Peoples ontologies are not subsumed within universalist claims. If they are, are they not subject to the mastery Krause is rejecting?

Anangu (and Māori) ontologies are communitarian—so the thought was that Western communitarian conceptions of IEJ may overcome this problem of mastery that individualism risks. Avner de-Shalit's CTIJ is perhaps the most comprehensive attempt to theorise intergenerational responsibilities and obligations within the communitarian tradition. De-Shalit suggests there is a continuing flow of obligations not to harm that embrace the ongoing community and individuals within the community. The question is whether communitarianism and de-Shalit are able to accommodate the expansive sense of community and fluid boundaries expressed in *kanyini*, and by Aboriginal philosophers.

The communitarian approach is somewhat closer to that of Anangu (other Australian Aboriginal peoples and Māori). Charles Taylor's claims that there are things that are of value to something more than just the individual: that the value and the appreciation of the value depend on and are embedded in the concept that there is an 'us' (Taylor, 1997). It is a value that involves something wider and more expansive than the individual and only exists within the more fluidly bounded community. And Alasdair Macintyre links elements of the essence of being human to the wonder of story-telling, and the qualities of human-ness that emanate from being part of the communal story (MacIntyre,1984). We create ourselves on this account, from within our society. Without that society, there are no anchors to tether us. These communities and stories are trans- and inter-generational. It is from this tradition that Avner de-Shalit draws his CTIJ (de Shalit, 1995).

'[M]oral dilemmas', suggests de-Shalit, 'derive from the very fact that the harm caused to future persons is the byproduct of a genuine … desire to improve … the standard of living of contemporaries' (ibid. 6). The consequence is that future generations are unlikely to inherit access to the same, and possibly not even similar, environmental goods those currently living enjoy. However, future generations have no capacity to directly appeal to the living, not capacity to contract with or negotiate for a different or fairer distribution of access to goods. 'An intertemporal contract is quite different from a simple one,' de Shalit explains (ibid. 98). Power resides solely with the living. The non-identity problem may provide an *excuse* for inaction on reducing environmental harms and as such constitutes a corruption of moral principles. However, de Shalit goes on to articulate a 'conception of the self' neither bound in time nor 'totally confined within the barriers of its own physical existence'. Rather 'one's self-awareness is related to one's community, both in the present and in the future' (ibid. 124).

While individual acts, considered and random, are also responsible for environmental harms, it is the *collective* impact of these individual acts that result in the most egregious challenges to IEJ. Solutions too must be collective. That I cease to drive my car or choose not to use air conditioning will not make a blind bit of difference to the global impacts of climate change (see Sinnott-Armstrong, 2010). However, if, collectively, we all scale back in the use of technologies and activities that contribute to long-term environmental harms, the negative outcomes may be averted.

However, under the Aboriginal philosophies we've looked at here moral corruption seems less conceivable. Where a sense of self is constituted from a timeless continuum of being and relating to multiple others, including nonhuman others, actions are directed at securing good for that wider time-transcending community.[100] Michael Walzer claimed in 1990 that the 'current critique [of liberalism], whose protagonists hope only for small victories, partial incorporations, and when they are rebuffed or dismissed or co-opted, fade away for a time only to return' (Walzer, 1990: 6). However, this is insufficient for Indigenous Peoples whose living communitarian philosophies are sidelined by liberal individualism. Any theory of justice founded on liberal individualism is incapable of affording culturally appropriate justice to those peoples, nor can it satisfactorily reflect their understanding of IEJ.

Remembering Mary Graham's claim that individualism is the starting place of infants, the question here is as an example of a more complete, nuanced and advanced understanding of the human condition, can de-Shalit's CTIJ deliver just outcomes for Aboriginal peoples? That is, can communitarianism include Aboriginal beings (as in ontology and lived experience) in a wider intergenerational community of justice? Can de-Shalit's communitarianism sufficiently establish an IJ of the sort imagined by Australian Aboriginal peoples?

De-Shalit suggests seeking the grounds for IJ involves 'moral and political debate and its two main components: reflection and the search for moral similarity' (de-Shalit, 1995: 31). People's individuation then becomes blurred: our society survives our death along with our projects. The future is integral to the present being, and on death, while aspects of our life projects cease there exists a thread of being that continues. De-Shalit goes further by suggesting an expanded conception of self, embraces also 'future objects—human and nonhuman—that are part of us' (ibid. 40). The nonhuman de-Shalit is imagining are the artefacts of human enterprise, rather than the nonhuman of other-than- or more-than-human

---

[100] There are those within the Western paradigm who engage with human-nonhuman entanglement and continuity of being. Donna Haraway and Tim Morton, for instance, attempt to theorise the entanglement of human and nonhuman in a way that moves us, human, to reconfigure relationships with nonhuman (Haraway, 2016; Morton, 2017). Their contributions, while important, are framed within Western epistemologies, and fail to acknowledge extant Indigenous epistemology and ontology which has already done this work. That is, my claim is that they ignore a body of work that has succeeded in this theorising, and more importantly perhaps, has created sets of practices and protocols of practice that also achieve the ends Haraway and Morton desire. While I appreciate that they are challenging liberal orthodoxies, by ignoring that which exists such theorists perpetuate practices of epistemological ignorance, violence and exclusion.

in the Aboriginal sense. Self on de-Shalit's account is constituted by relationships and projects, has a future-oriented projection and an ongoing attachment to human social and physical artefacts. The desire for continuation of our culture, monuments—in the sense of lasting records and reflections of essence of the culture—and access to resources is wrapped into personal identity and projects. Then future generations are able to be reflexively included as part of the current community, releasing us from the bind of the non-identity problem. Importantly, if future generations are members of our community, privileging the living at the expense of future generations becomes a matter of injustice. Justice, then, dictates we must not discriminate based on time-of-living.

Individualism seeks evidence of separation and dispassion. Both *kanyini* and *kaitiakitanga* seek evidence of connection and bonds, and in so doing neither distinguish the 'when' of existence—all generations, ancestors, living and future are members of the community. Living actors within the community, therefore, must include obligations to ancestors and future generations in their considerations. CTIJ also embraces a sense of communal continuum, of inclusive communities, and places obligations on the living to integrate future generations into their moral community. In essence CTIJ, *kanyini,* and *kaitiakitanga* hold the generations to be contemporaneously bound within the community. As contemporaries, actions in the present must integrate their good—the living individual may not be privileged at the expense of future generations. A divergence occurs, however, in understanding the relationship of the environment in and to community.

For Aboriginal, land comes first—physically, spiritually and ontologically. Land, environment, is the great teacher, a guide to understanding what it is to be. The land leads human to evolve beyond possessive individualism. Mary Graham explains;

> that a collective responsibility to land is vital if people are even to attempt to transcend ego and possessiveness; the point is that land always comes before ego and possessions. These things tend to present a barrier to upholding obligations to look after land. The effect of this transcendence of ego is to inculcate a sense of communal, rather than individuated, identity, and, most importantly, to encourage reflective engagement in all activities. (M. Graham, 2008: 188)

It is not possible, then, in Aboriginal philosophy for community to be 'complete' without encompassing land. For the purposes of social cohesion, land's function or role in community is not as a resource so much as a way of mitigating 'primitive' reversion to individualism. A person must empathise beyond the margins of the human to achieve a cohesive time-spanning community. Excising land from community abridges the boundaries of human potentiality. *Country,* is valued *intrinsically* and *inclusively*.

Kanyini, encapsulating the 'principle of connectedness through caring and responsibility' (Randall, 2003: 16), also exemplifies this worldview. 'When I look at a certain rock,' says Randall, 'it is not just a rock, it is a link to my *tjukurrpa* and all the stories of creation that exist in that rock. Within a grain of sand I see me and the universe' (ibid. 17). Where the boundaries of self are expanded to the universe, and the primary ethic governing relationships to that universe is custodial, then thinking long-term and thinking strategically.

122

'From this perspective, short-term tactics are of less consequence: it is important to keep the big picture in mind' (M. Graham, 1999: 107). A picture that transcends self, present, and the nature-culture divide. However, this transcendence is not captured within CTIJ. In the CTIJ value is bestowed on the environment by human for human—an attitude George Kateb also reflects when he derives obligations of stewardship of the environment from human dignity (Kateb, 2011).

One of the major problematics arising from the liberal tradition, in both individualism, and communitarianism, is the masking of the complex, entangled, intermeshed web of connections between human and nonhuman. It masks the presence of 'other' on our skin, within our guts—other without whom we cannot function, the care and maintenance of whom are critical to our wellbeing, and, in the case of gut biota, who influence not only our health but also our thoughts (Yong, E. (2016). The very rationality of the liberal tradition that underpins the understanding of human as stand-alone individuals and motivates liberal theory, is a function of a human-nonhuman collective. We are most certainly never alone. Finally, returning to the two quotations introducing this section, Aboriginal ontology identifies there is something more to community that human alone, everything is family. The next chapter challenges the boundaries of 'the person' further, examining the implications of the non-anthropocentric worldview that expands responsibilities beyond the self and human community.

Chapter 6: Growing the Land Up – listening to *Country*

> This land is something that is always yours; it doesn't matter what nature or politics do to change it. We believe the land is all life. So it comes to us that we are part of the land and the land is part of us. It cannot be one or the other. We cannot be separated by anything or anyone. (Yunupingu, 1997: 2-3)

I have established already that within holistic ontologies where nothing is separated and everything entangled, human *and* nonhuman are subjects of justice. However, so far the theories of IEJ examined focus on human welfare, with benefits accruing to the environment and nonhuman a reflexive benefit not an intrinsic objective of the theories. The theories are primarily concerned with the future wellbeing of humans. However, this is insufficient for people who make no sharp distinction between human and nonhuman. Specifically, this chapter explores this insufficiency in the Aboriginal context, where people 'are part of the land and the land is part of [them]'.

Dr Galarrwuy Yunupingu, of the Yorta Yorta people of Arnhem Land in Australia, is emphatic above. There is no separation. There is no 'one or the other'. Without a human-nonhuman distinction, if justice is to serve human, it must also serve nonhuman into and out of which human merge and emerge. A justice framework that disconnects one form from the totality of all-that-is cannot be just in a context of already always interconnected. Justice frameworks for many Indigenous Peoples need to encompass all-that-is if it is to serve the human.

The previous two chapters have found justice based on materialism and property ownership, individualism, and even communitarianism inadequate to the task of enveloping at least some Māori and Australian Aboriginal lifeways and philosophy. Hobbes' focus on ownership and validation of exploitation, for example, encourages waste and destruction, contrary to the principles of *kaitiakitanga*. Liberal individualism is too exclusive for the principles of *kanyini*. De Shalit's communitarian approach too forward looking for a people who draw ancestors into the domain of living. Moreover, all of these theories are resolutely anthropocentric. The evaluation of benefits to nonhuman is primarily through the lens of human advantage.

The community embraced within both *kanyini* and *kaitiakitanga* includes animals and plants, rock form and mountain, seas and waters. These nonhuman are not adjuncts to human

existence nor mere resources; they are extensions of self. As this chapter will explore, ontologies and societies in which nonhuman share genealogies and kinship relationships with human require IEJ to encompass nonhuman not instrumentally but, at the least, as agents, and possibly, subjects of justice. Remembering back to Chapter 4, Mary Graham explained that of the two relationships in Aboriginal life that between 'land and people' is paramount, and determines the relationships between people (M. Graham, 1999).[101] This chapter is motivated by the contrast between the dominant legal construct and prescriptions for the good life which rather than governing relationships between people and the land, are contracts between people to which the land itself is an adjunct (N. Graham, 2012; Meyer, 2015), and one in which the law and the good life are derived from relationships between land and human. It asks how IEJ is conceived under these latter conditions.

Looking firstly at the relationship between Aboriginal people, 'country' and Law, the chapter then turns to HR as a framework for IJ and considers its strengths, both in circumventing some of the previous problems and for the potential to expand the theory into the nonhuman realm. An assessment of a current Australian IEJ issue follows, specifically the federal government's drive to find a suitable site on which to establish a national nuclear waste repository—one both physically suited and socially acceptable. Finally, it will bring the three together to discuss rights within non-Western paradigms.

Listening to *Country*

> Animals and minerals, plants and animals, and photoautotrophs and chemoheterotrophs are estimates—each is external to the other only if the scale of our perception is confined to the skin, to a set of epidermal enclosures. But human lungs are constant reminders that this separation is imaginary. Where is the human body if it is viewed from the lung? The larger, massive biotic assemblage the lungs know intimately—including the green plants, photosynthetic bacteria, nonsulfur purple bacteria, hydrogen, sulfur and iron bacteria, animals, and microbes—is now what is thought to produce the metabolism of the planetary carbon cycle, which may be on the verge of a massive reorganization due to human action. (Povinelli, 2014: 42)

> My people have always been part of the earth. Every single inch of this land, and its waterways, is sacred land. (Lee, 2006)

When my father returned from WWII, during which he had been in active service in North Africa, a prisoner of war in Italy and later a fighter with the Italian partisans in the hills of the

---

[101] There are two important relationships in Aboriginal life, the first 'between land and people and, secondly, amongst those people themselves, the second being always contingent on the first' (M. Graham, 1999: 182).

Po valley, the first thing he did was don a pack and walk for three weeks across Aotearoa from Taranaki where he was raised, to the Hawke's Bay, home of Ngāti Kahugnunu, where his father, grandmother and ancestors back to the first Polynesian settlers were born and raised. It's a challenging walk. Starting from the black iron-sand beaches where Taranaki meets the Tasman Sea, up ranges, down into gorges, past the headwaters of the Whanganui, across the ranges of Te Urewera, mostly through dense rain-drenched bush, he ended at the white-sand rim of the mighty Pacific. Throughout the journey, he lived off that land. As a child, I asked him: 'Why?'. 'I needed to know my country again', was his simple response. It was a pilgrimage. Being reconnected with that rugged, dense green place, the rich humus laden air, whipping coastal winds and bright blue Pacific sparkle was essential for him to resettle, to pick up life again. He needed to breath 'the larger massive biotic assemblage', feel the earth, hear the birds, wind, rustling leaves, and water, smell the bush and salt spray to settle again. He was taking his country back and into himself.

A lifetime later, on 8 March 2017, in the online issue of the science journal Nature, Ray Tobler et al., disclosed DNA research indicating the first people to settle what is now Australia arrived in the north of the continental landmass approximately fifty thousand years before the present.[102] This research, however, went beyond confirming an 'arrival date'. It traced further migration patterns of these first settlers. From the North Eastern tip of the continent (connected at that stage by a 'land bridge' to what is now Papua New Guinea), one group went west then south along the western coastline, some settling along the way. Another group moved down the east coast, again some settling some moving on. Tobler et al., note two remarkable features of these migrations and settlement. Firstly, the speed they spread along the coastal margins: a mere 2,000 years after the journeys began, descendants of the original groups met up again somewhere along the coast at the south of the continent. Secondly, once groups settled a territory their descendants remained there. That means today something in the order of 2,000 generations of a clan have lived in one area. The authors suggest, 'the central cultural attachment of Aboriginal Australians to 'country' may reflect the continuous presence of populations in discrete geographic areas for up to 50 kyr' (Tobler et al., 2017: 4). They suggest, also, that to survive over the generations the clans had to 'know' their *country* well to adapt to the vast range of climatic, vegetative and faunal changes that have occurred over the period of their settlement.

---

[102] This date has been revised by a more recent study of stone artefacts which indicate human occupation in northern Australia dates from at least 65 thousand years before the present (Clarkson et al., 2017).

These two examples, my father's walk and the Nature article, may seem disconnected. In a sense they are. Within these two paragraphs nestle two distinct epistemological and ontological paradigms: the ages-old experiential versus the clinically scientific; the entwined versus the eye-of-God; the immersive versus the detached. It is the deeply entangled knowing of country that Tobler connects to ancestry, and my father connected to immersion, that is the focus of this chapter. It examines aspects of how some Aboriginal people of Australia express their connection to *country*.[103] Aboriginal legal scholar Irene Watson rejects the 'scientific' explanation of Aboriginal peoples' arrival in Australia.[104] It 'breaks our connection to country. It is', she says 'an explanation, which runs counter to First Nations' understandings, belonging and connections to place' (Watson, 2015: 12). Presumably, she would be equally scathing of the explanation Tobler et al., use to explain how Aboriginal people know they come from and belong to their *country*. Because she, like Bob Randall, know their 'people have always been part of the earth' (Lee, 2006: 8:03 minutes).

No other people on earth have a history of 2,000 generations growing in one place. Over 50,000 years each clan has taken root in *country*. The history of *country* and people is co-constituted. Together they have weathered ice ages, sea level rise and fall, drought, and storms, extinctions and flourishings: these changes are recorded in their stories (Gray, 2015; Reid & Nunn, 2015). Truths known to the clans are accepted by mainstream Australia only with scientific confirmation (Gough, 2015). Mainstream Australia has difficulty understanding Aboriginal connection to and knowledge of *country*. As of the 2016 census, 26% were born overseas, and those who trace their lineage to the convicts have maybe 7 or 8 generations of Australian living. Over 66% live in capital cities, at a disconnect from food production, wildlife, forests, watercourses and soils (Knaus, 2017).[105] Law is constructed to monitor relationships between humans. Western scientific epistemologies are privileged, and Western structures and thinking drive politics, policy and education within the nation (Donnelly, 2017; Henderson, 2014; Wootten, 2015). The ontological differences explored in the last two

---

[103] 'Country' is the ubiquitous Australian English term for Aboriginal home or clan territory. It means more than that though; *country* is a term that describes multidimensional spaces that carry history, ancestors, future generations, kinship relations, food, story, song, dance, obligations duties and the Law. Each language group, of course, has their own term or phrase. Here I need an encompassing term, and will use '*country*' for this purpose, unless quoting from an Indigenous writer, in which case I will use the language term that writer uses. Irene Watson for instance uses the Nunga word *ruwe.*
Country will be italicised to distinguish that it is the hold-all, stand-in word used as the universal form of different language terms, and to distinguish it from the standard English meaning of country.
[104] Watson is a scholar of both Aboriginal and colonial law.
[105] Of course many urban dwellers also head to the outdoors for recreation and feel real attachment to it. The point here is it is an optional attachment upon which survival is not at stake.

chapters: ownership and exploitation of nonhuman, and individualism, are also critical barriers to understanding.

When members of a Yolngu family from the far north of the continent, 'elders and caretakers for Bawaka country', published an article in the Voiceless anthology (Burarrwanga et al., 2012), Bawaka Country was cited as co-author. The piece begins:

> They are not voiceless, you know. Animals that is. But then neither are rocks or winds, tides or plants. They all speak. They all have language and knowledge and Law. They send messages to us; talk to us and to each other. All we have to do is listen; listen, and then act. (ibid: Paragraph 1)

After introducing themselves and inviting the reader to learn how to listen to *country* the human authors continue:

> We've also included our homeland of Bawaka as a co-author. That's because the land, the water, the animals, the plants, the rocks, the thoughts and songs that make up Bawaka contribute to what we are saying here in important ways. They speak to us, inform what we do and have guided our thinking and talking. They'll guide what we do tonight and what we will say. So we are a mixed group as we talk to you. We are human and non-human, tangible and intangible and everything in between.
>
> We said that all you have to do is listen to animals to hear them, but there is more than that really. To say that it is just about listening makes it sound too easy. To listen closely, to hear, requires relating to the world in a different way, understanding ourselves in a different way. And once you do that, you have to act in a different way, with a different kind of ethics. You see, for Yolngu, humans are not inherently separate from animals, from Country, or from the world in which we live. We are part of it and are bound in relations of responsibility and reciprocity. We relate to animals as fellow beings, as kin. They make us who we are, just as we make them who they are. Maybe that seems esoteric, and it's true that it is a matter of deep Law, deep spirituality and deep knowledge. But this way of living informs our day-to-day life too. We live on the land, with animals and other beings, so while it is deep, it's practical too. These ways of relating to animals and others are part of the way we think, act, eat, talk, dream and hunt. It is who we are and what we do. (ibid: Paragraphs 4 & 5)

There are concepts here that are repetitive of those present in the previous two chapters: an entangled human-nonhuman ontology; custodianship, kinship relationships with animal; an ethics of responsibility and reciprocity. Previously those ideas were shown to superimpose 'new' parameters on our conceptualisation of IEJ, parameters including: an ethic of intergenerational custodianship of nonhuman that recognises a subjective nonhuman with something more than material values; and a self-constituted of a more-than-human community that expands beyond presently situated individuals. In these introductory paragraphs of *They Are Not Voiceless*, however, we are introduced to another dimension of being that challenges the current boundaries of liberal philosophy. Human are not the sole bearers of wisdom: nonhuman can teach human—if only human will listen. Even further than

that, nonhuman is the source of (deep) Law, a set of rules that guide all human interactions with kin, animate and inanimate, material and spiritual.

From the land comes what there is to know, what it is to be, what it is to act. According to Mick Dodson,

> [t]o understand our law, our culture and our relationship to the physical and spiritual world, you must begin with the land. Everything about Aboriginal society is inextricably interwoven with, and connected to, the land. Culture is the land, the land and spirituality of Aboriginal people, our cultural beliefs our reason for existence is the land. You take that away and you take away our reason for existence. We have grown the land up. We are dancing, singing and painting for the land. We are celebrating for the land. Removed from our lands, we are literally not ourselves. (Dodson, 1997: 41)

Here we see an ontology in which to be human is to be more than an isolated being contained in a human form. Identity, to be 'one's self', is to be in communication with, 'inextricably interwoven with, and connected to, the land'.

Everything starts in *Country*

The land is the source. It is the source of all things. The Aboriginal people come from *country* (which one reason Watson and others reject the land-bridge story of Aboriginal creation), and go back to it where they dwell as ancestors (see for instance: Randall, 2003; Watson, 2015). And there is more than this. The ancestral beings, beings who inhabited the continent before human habitation, gave form to the original human. That is, 'the ontological relationship occurs through the intersubstantiation of ancestral beings, humans and land; it is a form of embodiment' (Moreton-Robinson, 2015: 12). Says Irene Watson, 'The Nunga 'I am' is not like the other, dominant Western subject of being, which is represented by a straight line of thought—beginning, middle and ending. Instead, a Nunga process encircles; within there is a process that allows a person to become one and to begin again. This process is non-hierarchical and non-linear; rather it takes the form of a cycle, of the continuity of being, becoming another cycle, nurntikki [to go on forever]' (Watson, 2015: 16). A person comes from the earth and ancestral beings and lives on earth before returning to earth and living in earth, from where they may emerge again in some form. This is an ontology in which there is an unbounded merger of all elements within land- and sea-scape.

In the listening to *country* Aboriginal people listen to ancestors, bringing them into the present, including them within an intergenerational, inter-species, inter-form community. This listening is active, it's a whole of body listening, and it involves interpretation within the context of explicit responsibilities to county. Arrante man, Des Rogers explained to me:

> I've just remembered that the desert oaks which are quite prolific in remote Australia in certain areas, I remember pulling up, because they actually provide a lot of shade and that, and I remember pulling up and someone, some of the elders from my mob, and the wind going through the … what are they called? They're not pinnacles, they are not actually leaves, they are like needles which, yeah, which sort of are leaves, and the wind going through them and making the noise they make which is not a scary noise, but they said to me, "That is your ancestors talking to you". And when you sit there and listen to that, the hair sort of stands up on the back of your neck and you think "Ah. Ok. So I know what that is". (int. DR)

As the desert oaks speak a reminder to Des from his ancestors, they reinforce his intergenerational obligations, to people, spirits, animals, plants, water, soil: his obligations to *country*. In his own words;

> …its not sort of, you sit down and say "maybe we should go up and burn that country up there because it hasn't been burned for 20 years" or whatever. You sort of learn through your lifetime that you have to preserve and look after particular areas of your country of what belongs to you, what you are traditionally connected to. And so you just do it when it needs to be done because you know it needs to be done and you also have responsibilities as well. So you are tasked with the responsibility of looking after, like for example, my great-grandmother's, where she was born on the Finke River, which is the oldest river in the world, I've got obligations around that small part of that area where she was born that I have to do. Like if I go there, for example, if I take anyone else there, the first thing we have to do is wash our faces in the river, to just rub the water over our arms, for example, just to acknowledge her, and her and my ancestors as well. We're there as friends and people. We are not there to do anything else. So I mean it probably sounds a bit bizarre but it's those really little things that make a big difference. And when you are given a responsibility, your responsibility to do this, you obviously take it seriously, and you have to abide by those rules. Because if don't you are letting not only yourself down, but you are letting your ancestors down, your letting clan down, a whole bunch of things. (int. DR)

Ancestors remain embodied in *country*, and *country* embodies also the spiritual world, to which Aboriginal relationality extends. For Aboriginal people land reverberates with spiritual symbols, beings, and reminders. As Moreton-Robinson puts it, '[t]he spiritual world is immediately experienced because it is synonymous with the physiography of the land' (Moreton-Robinson, 2015: 15). It is significant because this then invokes responsibility because not only *country* contains the spiritual but…

> …every Aboriginal person has a part of the essence of one of the original creative spirits who formed the Australian landscape. Therefore each person has a charter of custodianship empowering them and making them responsible for renewing that part of the flora and its fauna. The details of this metaphysics varied widely across the land with the physical environment, but the spiritual basis—the understanding that what separates humans from animals is the fact that each human bears a creative and spiritual identity which still resides in land itself—provided and still provides in many places the religious, social, political and economic force throughout Aboriginal Australia. (M. Graham, 2008: 183)

Protecting the spirit protects the whole expansive community beyond the confines of an anthropocentric ontology, beyond present, beyond the search for monetary riches.

> The land, and how we treat it, is what determines our human-ness. Because land is sacred, and must be looked after, the relations between people and land becomes the first template for society and social relations. Therefore all meaning comes from land. (M. Graham, 1999: 106).

The importance of meaning coming from land cannot be underplayed: it is the source, if only humans will listen because the rules of engagement for harmonious coexistence are contained within it. It speaks the Law: it has a 'voice in the business of law and order, as the law emanates from all things' (Watson, 2015: 80). *Country* is then more-than-physical-space.

Entanglements with other

If we think of country as more-than-physical-space, we may have to think, too, of it being something more than three dimensional. That is, *country* contains artefacts beyond (mere) physical representation and situation. *Country* contains spirituality, Law, knowledge-story, wisdom and being. *Country* is not 'out there' separate from human, but rather intimately entwined with human ontology, and essential to successful social relationships. *Country* has temporal dimensions—it contains all time. So too it is inhabited by seasons, sunshine and shadow, moonlight and dense darkness. *Country* is beyond isobars and coordinates, beyond latitude and longitude, kilometres and hectares. *Country* encapsulates all there is, was and might be. To *country* one has responsibilities of care, like the responsibilities one has to kin. These relationships and responsibilities are expressed in the phrase 'grow up the country' (Sharifian, 2006): akin to growing up children. That is, it is a phrase that speaks obligations to care, nurture, guard and protect. It is to care '*as country*' (Bawaka Country, Suchet-Pearson, Wright, Lloyd, & Burarranga, 2013).

IEJ in this context expands well beyond boundaries imposed by the anthropocentric theories of justice we have explored to date. Is there any framework within the liberal paradigm flexible enough to scaffold an understanding of country as wisdom giving, spirit containing, co-generating, timeless lawmaker? As something beyond spatial representation? How can justice theory accommodate an understanding of being human as being a community compound of human and nonhuman, past present future, simultaneously? Paradoxically perhaps, serious attempts have been made within the Human Rights family of justice theories.

Rights

> … underpinning [the] legal regime is the Western ontology in which the body is theorised
> as being separate from the earth and it has no bearing on the way subjectivities,
> identities, and bodies are constituted.
> (Moreton-Robinson, 2015: 17)

At first blush it may seem Human Rights (HR) approaches to justice will be the most anthropocentric of any. Certainly, the nomenclature indicates they are. Rights have, however, been used to extend protection to individual sentient animals (for instance by Nussbaum, 2007; Regan, 2004; Schinkel, 2008; Wise, 2004). More recently the language of rights and the contexts within which it is used has expanded beyond the individual. In addition to the 1948 Universal Declaration of Human Rights (UNDHR), relevant here are UNDRIP and the Universal Declaration of the Rights of Mother Earth (UDRME),[106] Ecuador's constitutional inclusion of Rights for Nature and Bolivia's Rights for Mother Nature law. The language of rights has been harnessed for the protection of the dignity and wellbeing of Indigenous Peoples and the nonhuman. Also in Aotearoa two geo-regions are now legally 'persons' (Arif, 2015; Hutchison, 2014; Shuttleworth, 2012), as are the Ganges River, its main tributary (Bhattacharya, 2017) and areas of the Himalaya Mountains including (streams, rivulets, glaciers and the air) in India (O'Donnell & Talbot-Jones, 2017). While none of them is fully international (in the sense of agreements between nation States) these mechanisms embody lifeways beyond the Western ontology referred to by Moreton-Robinson above. It is conceivable then if Indigenous Peoples' interests can be protected by rights, if Mother Nature/Earth (as a proxy term for nonhuman) can have rights, and if the rights structure can support geo-regional nonhuman persons, that a workable model of IIEJ may be conceivable out of a rights-based framework too.

This section will explore firstly the use of HR as a framework for IEJ. HR has proven a useful tool for examining the wrongs of climate change. Its framework sidesteps the problems of contractualism and individualism embedded within liberalism. Focusing on people as the endmost victims of the harms, the ultimate aim of HR is not to calculate a cost of harms and weigh them against costs for removing pollution from the environment (Bell, 2011). Importantly, in the HR framework is an acknowledgement of the intrinsic value of the rights holder. As we have seen, for peoples whose selfhood includes nonhuman everything has

---

[106] Drafted in conjunction with the World People's Conference on Climate Change and the Rights of Mother Earth in held in Cochabamba, Brazil on 22 April 2010. As an NGO initiative it moral force and international standing is different to such documents and the international UDHR.

intrinsic value. Human and nonhuman flourishing is one. Secondly, given rights have been given to nonhuman in various instruments, it seems possible the rights approach is capable of extending IJ beyond an exclusively human interface—albeit that Martha Nussbaum expressly faults the approach as unable to adequately address the capabilities of nonhuman animals (Nussbaum, 2007), and Krushil Watene further critiques the CA's inability, in its current form, to accommodate the values Māori attach to nature (Watene, 2016). The language and philosophical foundations of rights have been extended into the nonhuman realm in the instruments cited above. How to theorise IJ and accommodate nonhuman in the HR and CA will be explored both here and expanded further in the next two chapters.

Weighty Interests

Rights, says Simon Caney (referencing Joseph Raz on the same topic), indicate that 'X has interests which are sufficiently weighty to impose obligations on others' (Caney, 2008: 538). This is a promising beginning, for perhaps X need not be a physical, individuated, living, human being. X need only to be something that has (or possibly, will have) 'weighty interests'. But that is to get ahead of ourselves. First, we need to establish what a rights-based IJ offers people.

The idea that X's interests create obligations and duties on others, that the interests generate rights, is age-old, woven within the bodies of various world theological texts, where rights discourse promote concepts of equality and dignity (Coyne, 2017).[107] They also appear in 'common law, rules and principles established by judges on case-by-case through the centuries' (ibid.). The first written 'bill of rights', the Magna Carta, dates to 1215 (ibid.). Locke used 'natural rights' as a foundation for much of his work upon which liberal political theory continues to build (Locke, 1997; Raz, 1989). Historical precedence, legal, constitutional, and religious validation formed a very strong scaffold from which the later 1948 UDHR was built. With the United Nations' validation and widespread international take-up, HR has assumed a universalist mantle—although this universality is contested because, once more, the spectre of Western bias and a very liberal individualism arise in the idea of negative rights of non-interference. That is, HR focuses on creating the space for the individual to create the life they design for themselves. Stepping away from those challenges, the first question to address here is: Can HR provide a sufficient framework for an IEJ?

---

[107] The concept of dignity is critical as the underpinning value of rights. It is the focus of Chapter 8.

The Parameters of Rights in Declarations

Drawing from Article 3 of the UDHR (everyone has the right to life, liberty and security of person), a human right to a clean environment was recognised in the Declaration of the United Nations Conference on the Human Environment 1972 (Stockholm Declaration). Clause 1 states:

> …Both aspects of man's (sic) environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself.[108]

Clause 6 expands the domain of interest beyond living humans:

> … For the purpose of attaining freedom in the world of nature, man (sic) must use knowledge to build, in collaboration with nature, a better environment. To defend and improve the human environment for present and future generations has become an imperative goal for mankind (sic) …

More specifically within the Principles of the agreement, the protection of both the environment and future generations is linked to rights.

> Principle 1
> Man (sic) has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he (sic) bears a solemn responsibility to protect and improve the environment for present and future generations …

Twenty years later the Rio Declaration on Environment and Development declared:

> Principle 1
> Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

> Principle 3
> The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

The Rio+20 Declaration affirms the 'respect for all human rights' (Clause 8) and, in Clause 9, the importance of the UDHR and numerous subsequent instruments to protect human rights. However, it extends this rights discourse significantly in later clauses, specifically:

> 39.   We recognize that planet Earth and its ecosystems are our home and that "Mother Earth" is a common expression in a number of countries and regions, and we note that some countries recognize the rights of nature in the context of the promotion of sustainable development. We are convinced that in order to achieve a just balance among the economic, social and environmental needs of present and future generations, it is necessary to promote harmony with nature.

---

[108] Many documents cited here use the male form as proxy for all human. I draw attention to it here alone rather than repeatedly. Suffice it to say that the conventions of the day and the institutions continue to pervade documentation.

> 40.   We call for holistic and integrated approaches to sustainable development that will guide humanity to live in harmony with nature and lead to efforts to restore the health and integrity of the Earth's ecosystem.

In these three documents (UDHR, Stockholm Declaration and Rio Declaration) we have rights to an environment conducive to human flourishing, and rights for future generations. Additionally, Clause 39 of Rio+20 specifically reflects the language of many Indigenous Peoples—with reference to non-human as 'Mother Earth'. Leading edge, they push the boundaries of HR beyond protection of individuals' civil and political liberties by states. However, in each case the rights are human rights; nonhuman are beneficiaries only in-so-much as a functioning environment advances human interests. While they self-declare universal ambitions, unless nonhuman are beneficiaries there remains the risk these Declarations thwart the agency of those for whom nonhuman are kin.

Indigenous criticisms of rights discourse

There are elements to the UDHR that make it ontologically inaccessible to some peoples (see, for instance, an extensive critique in Caney, 2000). This Universal Declaration can be found wanting because it privileges a particularly Western ontology, one in which human is dominant and the nonhuman a resource for human consumption and capital accumulation. Like Caney, I do not think HR irredeemably excludes ontological diversity. In this chapter and the next two, some of the assumptions that underscore HR are assessed and challenged. Chapters 7 and 8 then discuss how the ontologies may be reconciled.

Drawing from the past three chapters, at issue are the focus on the individual, not collectives or peoples, privilege of individual ownership of property, separation of the human body from the earth (to paraphrase Moreton-Robinson (2015)) and lack of provision for a distinct pathway for Indigenous Peoples in settler states (or any state in which they are the minority population) to protect their political and cultural autonomy and interests. In part to redress this imbalance, UNDRIP specifically protects those and other rights for Indigenous Peoples.

UNDRIP

The Annex to UNDRIP affirms, in a move away from universalism '…that Indigenous people are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such'. Moreover, it proceeds to affirm that any 'doctrines, policies and practices' that advocate an individual or people are in

anyway—'national origin, racial, religious, ethnic or cultural'—superior to another are 'racist, scientifically false, legally invalid, morally condemnable and socially unjust'. The Annex is then suggesting the rights structure is sufficiently flexible to accommodate these differences and moreover, there is a moral duty to make that accommodation. The question is, is it sufficiently flexible to accommodate intertwined more-than-human ontology and collective identity?

We can look to Article 1, which deals with collective identity by simply asserting it as a right,[109] or Article 8 that protects cultural integrity.[110] Article 13.1 protects '… the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures …'. Using the language and frameworks familiar the HR tradition, collectivist peoples have, therefore, asserted a collectivist ontological foundation for the UNDRIP. Put another way, UNDRIP subverts the individualist approach, and Indigenous Peoples reworked the framework to fit their needs.

Furthermore, and importantly, I suggest that implicit in Article 25 is a right for nonhuman inclusion in community where it fits a given cultural frame. If, as Article 25 states,

> Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard,

it seems reasonable to posit, where those relationships entangle with nonhuman, those relationships are also protected as a right by this clause.

Finally, UNDRIP asserts Indigenous Peoples' right to promote their own Law structures, protecting them under the conditions of Article 34.[111] Indigenous Peoples have, it says, the

---

[109] Article 1
Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights 4 and international human rights law.
[110] Article 8
1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
(d) Any form of forced assimilation or integration;
(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.
[111] Article 34
Indigenous Peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

'… right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs'. Contrary to the settler state foundation myths, Indigenous Peoples had codes and laws through which they managed their societies. Those laws are not forgotten. Moreover, they can and do have different foundations to those of the Anglo-tradition of the settler states.

Australian Aboriginal peoples' Law is based in a long, continuous association with *country*. It grows out of the interrelations between *country* and human. This is in direct contrast with Western law which is a prescriptive set of rules governing relations between people (Watson, 1998).

> The land, and how we treat it, is what determines our human-ness', says Mary Graham. 'Because land is sacred and must be looked after, the relation between people and land becomes the template for society and social relations. Therefore all meaning comes from the land. (M. Graham, 1999: 106)

Article 25 and 34 of UNDRIP, in upholding protections to land, procedures and practices, are advancing a right to maintain and practice Aboriginal Law, and relationships with *country*.

Rights as foundation of intergenerational justice

These Declarations, and the later Millennium Goals and Sustainable Development Goals (based in the CA, another expression of the HR approach to justice as discussed previously), harness the concepts embedded in HR discourse. They contain agreements to promote environmental protection, and intergenerational and Indigenous wellbeing and dignity. However, they do not articulate the philosophical grounding for the rights framework to underscore their normative validity. That work is done by political philosophers. It would seem to be a particularly egregious oversight if those normative theories were unable to accommodate the rights of Indigenous Peoples as articulated in their most fundamental form in UNDRIP. If the theory supporting UNDRIP and other implementation mechanisms cannot accommodate Indigenous rights, if it denies Indigenous people access to their real relations with *country,* with ancestors and nonhuman beings over time—access to IEJ—then theory is at risk of exacerbating colonial wrongs.

Climate change has, arguably, focussed the minds of Western political theorists on the issue of IJ—its effects so long-lived that previous intuitions about IJ obligations are stretched beyond their earlier boundaries. Cognisance of these long-term harms has prompted justice

137

theorists such as Derek Bell, Simon Caney, Tim Hayward, Lukas Meyer and Henry Shue, to use rights to promote climate change justice and by extension IEJ. Essentially, they each argue equality and dignity, guaranteed and protected by the UDHR, are not temporally contingent. If it is sufficient that living human beings have protected rights, those same rights, and their concomitant obligations and duties can be attached to future persons, qua human beings (Caney, 2008; Hayward, 2007). This is, however, a contested claim.

Ruth Macklin and Axel Gosseries, for instance, claim HR belong to the living alone, that right bearers must live contemporaneously with those on whom the obligations and duties of rights fall, and the rights can exist only at the same time as a person exists (see Bell, 2011: 105). This is a claim that meshes with the non-identity problem. The fundamental argument is, rights may be assigned only to those we can identify, not to unidentified, abstract potential human beings. Such arguments fly in the face of the rights provisions in Clause 1, and Principle 1 of the Stockholm Declaration, Principle 1 and Clause 39 of the Rio Declaration and Articles 13 and 25 of UNDRIP. They each specifically extends rights to future generations. Enshrined in international Declarations, these rights to future generations have normative weight. That is, the Declarations indicate that 'X has interests which are sufficiently weighty to impose obligations on others' where X, in this case, is future generations. This brings us back to the question: how are these rights justified?

Those who claim future generations have a right to the benefits of a similar-to-Holocene stable climate will then assign to current generations duties to protect that right. Caney, for example, posits present and future generations of 'persons have fundamental interests in health, subsistence and supporting themselves and … the duty to protect these interests from dangerous climate change is not unreasonably demanding on the appropriate would-be duty bearers' (Caney, 2008: 539). He specifically denies that the discount rate as used in the Cost-Benefit Analysis (which 'discounts' the comparative value of future goods) can be applied to rights.[112] The right inheres, he claims, to the interests of those concerned, to the person, not to the temporality of that interest bearer. Moreover, Caney argues the 'rights of a person in the twenty-first century have the same moral standing as the rights of a person in the twenty-third century' (ibid.: 540). The important argument for temporal continuity of rights, is on Caney's account, that if persons have rights not to suffer the ill effects of climate change

---

[112] Cost-Benefit Analysis and discount rates will be discussed in the next chapter.

in the present, so too do future persons. The right's 'moral importance does not diminish over time' (ibid: 551).

Derek Bell takes these future rights claims one step further by asserting:

> … all human rights-based duties are current duties grounded in the future rights of persons living in the future (even if it is the very near or immediate future). We are duty-bound not to act so that a person living in the future will have one of their human rights violated as a consequence of our actions. … Duties come temporally before human rights because actions come temporally before their effects. Human rights come normatively 'before' (i.e., they justify) duties because effects on human interests come normatively 'before' (i.e., they justify) restrictions on actions that cause those effects. (Bell, 2011: 107-8)

The argument here is that we may make claims on behalf of those people who will inhabit the future because *every rights claim precedes the implementation of the duties and obligations attached to it*. There is no moral difference in whether the effects are apprehended five minutes or five hundred years later. The duty to uphold HR is always projected future-ward beyond its formulation. In the context of IEJ, this means where we know our actions will cause harms either immediately or into the future, we have a duty not to take those actions. We have that duty because future people will be human and humans have rights qua humans no matter when they live. As future persons will be human they have rights, rights that uphold human dignity and flourishing. This imposes *preceding* duties and obligations to act to protect those rights.

Bell claims there are threshold human rights, thresholds that describe the bare minimum entitlements necessary for a life of dignity. Our acts (active or of omission) violate a right when they cause a person 'to fall below that threshold' (ibid.: 109). So if, for instance, we jeopardise a person's access to a threshold level of subsistence, no matter when they live or when the act is committed their right to subsistence has been violated.[113] Neither the act nor duty is identity dependent. 'Current persons', Bell says 'have a duty not to undertake actions that will violate the rights of the actual future persons who will exist' and, addressing the non-identity problem, he continues, 'even if those particular future persons would not have existed but for those very actions' (ibid.: 110). If a person is worse off at any time as a result of an action, they have been harmed.

---

[113] The right to subsistence is designated by Shue and Caney as a 'basic human right'. (Shue, 1980; Caney, 2011).

Similarly, Simon Caney makes the case that future persons have basic rights—1) the 'human right to life', 2) the 'right to health', and 3) the 'right to subsistence' (Caney, 2015: Section 1.2). Each is threatened he argues by climate change. By extrapolation, on a more localised scale so, too, do pollution of waterways and aquifers, soil erosion, species loss, air pollution, etc. That is, while Caney's focus is on climate change, it is possible to extend his thesis to address any infringement or impact on the environment that undermines rights to life, health and subsistence. So on this account, we see that an environment conducive to human well being can be interpreted as contributing positively to the 'weighty interests' of life, health and subsistence. Concomitantly, there is a duty on the living to ensure the environment remains clean enough to support such weighty interests, now and into the future.

Indigenous rights

Within this rights structure, however, the environment per se is protected only in so far as it supports (individual) human flourishing. 'Life' has a narrow definition. Communities, including ancestors, the past, and the environment (animate and inanimate) are not specifically afforded weighty interests. This is consistent with UDHR and the Stockholm Declaration. However, under the terms of UNDRIP Indigenous Peoples philosophies, and relationships with nonhuman must be protected (see, for instance, UNDRIP Articles 1, 8, 12, 25). These protections are a matter of Indigenous rights.

Duncan Ivison specifically examines the normatively of the 'logic of aboriginal rights' (Ivison, 2000; 2003). Specifically, he asks (with Paul Patton and Will Saunders),

> [i]f contemporary liberal political thought presents itself as a universal idiom for understanding and reflecting upon social and political relations, where does this leave Indigenous political thought and Indigenous understandings of their rights to land, culture and self-rule? (Ivison, 2000: 1)

The 'universal idiom' of the rights discourse remains bound within the liberal ontology, as the discussion above on the use of rights to protect future generations demonstrates. Indigenous political thought that arises from listening to *country*, that is generated in dialogue with *country*, and the culture that is embedded within it is left out in the cold.

The nature of the unique qualities of Indigenous rights was examined in Chapter 2. Drawing on Ivison the argument ran that Indigenous peoples' 'rights stem from their own collective lives, self-understandings, political philosophies and practices. And they are justified in light of them' (Ivison, 2003: 321).

These rights form a foundation for supporting (often minority) Indigenous interests within liberal democracies. Their function is to support freedoms, wellbeing, and dignity. Within Indigenous rights theory runs a thread of claims linking to culturally specific philosophy, ontology, epistemology, and belief systems.

Ivison suggests that accommodating Indigenous rights 'will probably mean tolerating various departures from liberal norms' (Ivison, 2003: 336), and 'aboriginal rights are usually conceived as coexisting with those of the Crown, as opposed to being mutually exclusive' (Ivison, 2003: 336).

If we take as a possible normative foundation for IEJ the claim 'X has interests which are sufficiently weighty to impose obligations on others' we can then claim where X is future generations and weighty interests are such things as life, health and subsistence, the living have obligations to protect future generations from environmental damage that threatens their weighty interests. Moreover, we have a basis also for the obligations to Indigenous justice where weighty interests include the right to maintain 'customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs' (UNDRIP Article 34).

Aboriginal philosophy as foundation for rights

If as Irene Watson, Mary Graham and others claim, Law comes from country—from the totality of all-there-is—then country has normative force. In the context of Aboriginal Law then, where 'X' equals '*country*' we can say '*Country* has interests which are sufficiently weighty to impose obligations on others'. Or to paraphrase '[country has a right] not to suffer from [pollution and damage] which jeopardises these interests' (Caney, 2008: 537). This then grants intrinsic rights to *country,* all it contains, and all the entangled relationships the concept *country* incorporates.

There are a number of instruments already operationalised to embed this sense that '*country*' has weighty enough interests to place obligations and duties on people to protect them. The weighty interests include such things as life, wellbeing, and ongoing integrity. Protection mechanisms include the UDRME, the Ecuadorian Constitution, Bolivia's Rights of Mother Earth Act and the personhood mechanism used in Aotearoa and India. Additionally, the Swiss

Constitution protects living things' dignity, and both Mongolia and Bhutan place constitutional obligations on citizens to live in harmony with more-than-human.

Not only do these instruments protect an absolute non-fungible value in nature and the entangled dependence of human in nonhuman, they are forward-looking. The environment's right to 'health' in each case places obligations on humans. While Chapter 8 examines the foundation of the Rights for Mother Nature/Earth discourse and instruments, what is relevant here is that they extend rights beyond human rights, establish nonhuman weighty interests, and extend the rights into the future and to protect those interests establish sets of obligations and duties on human behaviour. In other words, it is possible to stretch the Western conception of rights, one that recognises only individual humans, to encompass ontologies with very different understandings of an entangled human-nonhuman realm.

Where to put radio-active waste?

> We have an obligation and a mandate to care for and nurture all things for the benefit of future generations still coming. We have an obligation to pass on country to the future. We cannot enter agreements that would destroy life and ruwe. Proposals to develop nuclear waste dumps, or to construct mines that will pollute the natural world, are artefacts of muldarbi deals. (Watson, 2015: 161)

With this background in Aboriginal philosophy and practice and HR discourse in mind, I turn to something of an intractable political problem for Australia's Federal Government, and two Aboriginal clan groups. Over the next few pages, colonial understanding of 'property's inescapable embeddedness in social relations' (Meyer, 2015: 116) finds resolute resistance in Aboriginal ways of being in and with *country*. The aim, here, is to examine how and if a fully implemented rights framework could scaffold IEJ in these communities—all the while remembering while Australia has no Bill of Rights the exercise is entirely hypothetical.

Australia's former Labor Prime Minister, Bob Hawke, has spent twenty-five years trying to convince the nation to create a nuclear waste dump in remote Australia (See for instance, Butler & Compagnoni, 2016; Kinninment, 2016). This would, he claims, solve two problems. Firstly, global nuclear waste could be 'safely' stored out of sight and well away from densely populated areas. His vision is for the waste to be shipped to Australia in secure containers. Then, along with Australia's own nuclear waste, it would be transported overland to remote areas with a geology suited to underground storage. There the waste would remain underground and radioactive for millennia. Secondly, the Aboriginal people of the area would

receive financial compensation for the use of their land. Australia's Aboriginal people have an asset in land that they have difficulty capitalising on because it is held in common, under Native Title provisions, not in fee simple title. Aboriginal people, especially those in remote communities, are also some of the poorest in the nation, with inadequate housing, poor medical and educational facilities, and limited employment opportunities. If the nuclear waste was to be stored on their land, they could be beneficiaries of the world's willingness to pay for that storage. Hawke is perplexed that Aboriginal people reject the proposal. Still not to be rebuffed, exhibiting the tenacity that made him a leader, again and again he has repeated the refrain. It is he says a perfect solution to two wicked problems.

His perturbation is not unusual, and is explained away in 'mainstream' Australia the following way: 'When Indigenous peoples resist 'development projects' like mining they are represented as being child-like or innocent of the real world, unable to comprehend the benefits and logic of the development, even irrational,' however as Watson goes on to explain, 'such a view illustrates a ceaseless and continuing global colonialism' (Watson, 2015: 97). That Hawke, a left-of-centre politician, has prosecuted this cause for twenty-five years without fully apprehending the reasons for Aboriginal Australian's resistance demonstrates the depth of ongoing colonial rejection of Aboriginal being. For Hawke land is geological structures, topography, cadastral coordinates and income generating resource. He is steadfastly unwilling to view it otherwise: to do so may seem 'irrational' or 'childlike'. However, Hawke is not alone in pursuing this cause.

Along the populated margins of the Australian continent stores of radio-active waste from medical and scientific laboratories are mounting up, stored above ground in temporary facilities in densely populated areas. Additionally, the Australian government are contractually obliged to take responsibility for a ship-load of spent uranium from overseas facilities, part of an earlier agreement to receive the spent material back from sales of Australia uranium.[114] What successive Commonwealth governments (both progressive and conservative) want, and have legislated for, is to build a large, long-term nuclear waste dump on and in isolated, stable land far from the centres of concentrated population. They've met with the same resistance Hawke experienced.

---

[114] Specifically spent nuclear fuel rods due to be returned from reprocessing in France and Scotland from mid-2015. (see http://beyondnuclearinitiative.com/issues/muckaty/ accessed 21 April 2017)

Muckaty Station — radio-active nightmare

Muckaty Station in the far north-west of the country, the traditional *country* of the Warumungu people, was nominated as the ideal site in 2007 (beyondnuclear, 2010). Meeting the essential criteria—stable landmass, sparse population, far from population centres—the site was nominated by the Northern Land Council (NLC).[115] The process, some Native Title holders of the Muckaty Station claimed, was secretive—there was no public consultation.[116] NLC relied on geologists and anthropologists to validate their choice. As one Native Title holder expressed it:

> The NLC mob didn't come round to ask all the men "You mob come out and have a look around", nothing for that. (beyondnuclear, 2010: 5:54 minutes)

The Federal Government Minister responsible for finding a site at that time, Martin Fergusson, was roundly criticised. Criticism was specifically directed towards him for his role in limiting relevant State and Territory laws, suspending environment and Aboriginal Heritage Laws and negating the need for site nominations to have the consent of Traditional Owners. Importantly, he also declined community invitations to meet with them '*on country'*, unwilling to face the discomfort of Aboriginal opposition or as one Muckaty woman more poetically said:

> Fergusson sat on this issue for how long? Like an old hen waiting for an egg to hatch, he knew. He knew it was gonna turn out to be an ugly duckling. (beyondnuclear, 2010: 8:13 minutes)

Diane Stokes, who became a primary spokesperson for resistance to the site, was not always opposed to it. She had been wooed early in the piece by the government and was favourably disposed to the dump.[117] However, discussions with family lead to her epiphany. She explains it this way.

> As soon as I thought to myself, am I going to have the money or have my country, my grandfather's country? What am I supposed to do? Do I want to keep what I am doing now, saying, 'Yes', or say, 'No' to it, or do I make a full stop? [I] turned around. I started going against it. And I did it with a full heart. I wanted to do it because I wanted to do it for my people. They fought hard to get the land back. They went bush bashing around this

---

[115] Aust has 22 Land Councils. They are the representative body for geographically associated Aboriginal land holders and clan groups. See https://www.creativespirits.info/aboriginalculture/selfdetermination/aboriginal-land-councils#axzz4m1Bnpi7J.

[116] The process was more complex than this. Sacred sites are protected under Native Title, therefore before land altering activities can happen there must be a survey and report commissioned to identify them. Anthropologists are hired as the authority for these reports. The opponents of the Muckaty nuclear dump complained that firstly the NLC had not come and walked with their elders to understand the songlines—describing the sites and knowledge associated with them—and moreover they had then kept the anthropologists' report secret. See Muckaty Voices https://www.youtube.com/watch?v=xcuNpT84Ovo.)

[117] The point to note here, as highlighted in Chapter 1, the issue is not one of wanting to remain hide-bound to the past. It is, rather, an issue of progress on peoples' own terms, within their own cultural values, and in line with their living modern ontologies.

country to see the sacred sites, to see the water holes, to see the soakages. They done a hard job going around with bush lawyers, with anthropologists. They did the big hard work through the hot sun, through the winter. Until they made it to the end to get their land back.

So I thought, that's a very hard job and a long job and a long journey my old people who's not around to talk for their country. So I stopped and I turned around and I said, 'OK I will say 'no' to the waste and I'll keep pushing', and here I am for nearly eight years, seven years I'm still fighting hard. (Irom, 2014: 4:00 minutes)

For the protesters and speakers for the clans at Muckaty, resistance to the nuclear waste dump was absolutely a matter of intergenerational and environmental justice. As Diane's statement above indicates, ancestors are due justice, and the land itself, for whom those ancestors can no longer speak, is due justice. These are recurrent themes in the discourse, as is the process of personally identifying ancestral connections to legitimise the right to speak on behalf of *country*. At the public meetings and throughout Muckaty Voices, speakers introduce themselves with such references as;

We know where we stand and we know who we are, and we know our totems and we know our lines, and we know the dancing, and we know the story of the country. (beyondnuclear, 2010: 3:18 minutes)

…my mum's dreamtime coming through there… (beyondnuclear, 2010: 1:02 minutes)

…because it's got lot of traditional things. I travelled with my father and mother, because my father was a Traditional Owner for the mother's side of the land… (beyondnuclear, 2010: 1:15 minutes)

Moreover, as the following two-person sequence shows, not only are past generations important, so too are future generations.

Speaker 1
We got our kids coming up and we've got to show them and learn them and then they can carry on.

Speaker 2
We just want our grandfather's land to be clean all the time. (beyondnuclear, 2010: 8:52minutes)

And at a different public event, a leader for resistance stated:

We want to take responsibility for the land. What the whole last generation did for leave for us. The old people have all passed away now. So it's time for me to take responsibility for this land. (Irom, 2014: 5:15 minutes)

This reference to ancestors establishes traditional links to *country* and importantly flags the responsibilities, obligations and duties attached to the links. Obligations that extend to the land itself, ancestors and future generations. Many songlines cross the area, including those

of the Milwayi, Ngapa, Wirntiku and Ngarrka peoples.[118] Having spent years negotiating title over these traditional lands, the clans were now called to a new fight: with the NLC; within the clans; between the clans; and with the Government. It is a fight they won. The point of this section, however, is not to put the fight under a microscope, but rather to examine the ontology and discourse around intergenerational and environmental issues and consider whether a rights-based theory is capable of generating IIEJ for the people of the Milwayi, Ngapa, Wirntiku and Ngarrka clans, and other Aboriginal clans.

Are the HR based theories of IEJ (taking the application of HR theory to climate change as the proxy for IEJ more broadly) capable of expressing those ways of knowing and being in the world? On the basis of a rights structure that states 'X has interests which are sufficiently weighty to impose obligations on others' the previous section suggested where X is future generations and weighty interests are such things as life, health and subsistence, the living have obligations to protect future generations from environmental damage that threatens those interests. Moreover, obligations to Indigenous justice are deemed sufficiently weighty to include the right to maintain 'customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs', as protected in UNDRIP.

Earlier I suggested that the representation of *country* is something more than three dimensional. Within the Muckaty protest video, there is a discussion over disputed claims to the area the dump site will cover. The invitation to settle the dispute takes the following form:

> …But the only way we can do this now is by challenging them for this dance. Whose land goes through here like ceremony, who's dreaming goes through here? And then we corroboree, you know, to show the mark and the respect and it respect us too.

> Aboriginal people, we got that land, that country in our hearts and in our minds and in our soul. And the knowledge of it inside us. Aboriginal people have it up here all the time (pointing to his head). (beyondnuclear, 2010: 6:20 minutes)

And, again, the connections to the land and the *country's* own agency are highlighted:

> We survived through that country and we want the country to survive itself.
> And we want to be very strong to say that and we want to support each other and be very strong. (beyondnuclear, 2010: 9:19 minutes)

The land, territory, features, creation stories, ancestors, attached history, and co-relationships are represented, 'mapped', in form and through dance and song. To prove a claim a dance/song corroborates the claim to belong to *country*. This portrait of *country* is

---

[118] *Songline* is an English descriptor for the oral record and recounting techniques Aboriginal people use to describe and delimitate territory, history, cosmology, routes, landscape features, water sources, etc.

multi-dimensional, multi-layered, multi-representational and, although not mentioned in the quotation above, multi-temporal. Importantly from a legal perspective, it indicates more than one group can lay claim to an interest—'title'—over a site. Muckaty represents a complex of non-exclusive claims, in which land is mapped and negotiated in dance, song and finally negotiations require corroboree until agreement is reached. Quite unlike the Western understanding of a property right, the Aboriginal approach is based in continuous being, not dominance, cycles, not linearity (Stewart-Harawira, 2005: 36). So a rights-based justice must be able to respect this multi-dimensional understanding of more-than-human and the non-exclusive claims to traditional relationships with *country* in a manner that circumvents the liberal reliance on 'ownership' structures of an objectified land.

Decolonising HR: weighty interests for Country

Can an HR-based system of justice account for the independent agency of *country*? Simon Caney has made a powerful case for including future persons' right to a clean environment within the HR structure. He argues future generations are entitled to an environment that is at least protected in as good a state as it was received by the living. He substantiates this claim firstly in moral standing. Moral standing, on Caney's account, does not diminish by virtue of when a human exists. Secondly, such an environment is an essential precondition for the rights to life, health, and subsistence. However, he theorises on behalf of individual future persons. The HR structure is designed to protect individual interests. Caney's interpretation of HR structure is challenged by the intergenerational, interspecies, whole-of-nature communitarianism and philosophies of Aboriginal people. The theories of Caney, Bell, etc., instrumentalise the environment, as do the Stockholm, Rio and Rio+20 Declarations. For instance, the Rio Declaration states; 'Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature' (Principle 1). The obligation to reduce carbon emissions and other pollutants rests in the right of humans to life, health and subsistence. It is not extended to a right to life, health and subsistence of the environment *per se*.

The Warumungu people have demonstrated they have weighty interests that bring with them obligations and duties that under the terms of UNDRIP the government is required to protect. They have interests to uphold their lifeways, culture, traditions, and that which they hold sacred. These are weighty interests in that they constitute that which it is that makes them

human. They are the interests that define them as human beings. These are though human interests. That is the rights are offered within the Western ontology. They are valid where they protect human interests. However, I think that is insufficient to scaffold a truly *Indigenous* IEJ. Such a validation, if it is all that applies maintains a Western lens.

If we apply a structure that says only that Warumungu people have weighty interests, the risk is that once again 'solutions' to the 'Aboriginal problem' wrap them into the Western discourse, based in the liberal ontology in which HR theory is immersed. While this may lead to a 'just' outcome as with this Muckaty case, it does so via the court system, another colonial structure as we saw in Chapter 4 premised on Western ontologies. That is, they had to prosecute their rights in the language, structure and ontology of the West. Their *country* was unable to talk for or represent itself. That is, *country* within the system has no rights. The obligations for *country* cannot be contested in a court if the court does not recognise *county's* subjective rights*.*

However, legislative instruments have been engaged around the world to formally extend that right to the environment. In Aotearoa, Te Awa Tupua (a river system) and Te Urewera (a forested range complex) are legal persons, 'with the full capacity a legal person' (New Zealand Government, n.d.: 13). As a legal person, like other 'legal persons' (ships, corporations, etc.) rights of personhood include a continuing interest in a 'species' specific life, health and subsistence. However, these acts go further by including the attribution of *mauri* and *mana*. These are spiritual elements of being which apportion life force and standing to all things. These Acts, then, have moved beyond the instrumental, and assigned interests to life, health and subsistence to the regions per se. That is in Australian Aboriginal terms, *country* is recognised in Aotearoa as subject—at least in these two areas. And, as mentioned earlier, India has employed the same 'personhood' mechanism to recognise the sacred Ganges, other rivers, areas of the Himalaya and including the air.

Similarly, the three Rights of Mother Earth/Nature instruments, UDRME, Ecuador's Constitution and Bolivia's Right's for Mother Nature law, have assigned rights beyond human interests alone (Bolivia, 2012; Ecuador, 2008). The interests of non-human protected by these instruments are substantial, and more than simply a reflection of something of benefit to humans. In other words, the weightiness lies with the environment, rather than with a human right to a clean environment. For instance, Bolivia's Law of Mother Earth states in Article 1, 'This Act is intended to recognize the rights of Mother Earth, as well as the

obligations and duties of the Plurinational State and of the society to ensure respect for these rights' (Bolivia, 2012). The HR structure has been employed to recognise that 'Mother Earth has interests which are sufficiently weighty to impose obligations on others'.

In Australia, no such mechanism exists. The political and judicial systems encountered by the Warumungu fail to acknowledge Aboriginal as cultured people, with philosophies, traditions, Law, duties and obligations under their own culture. That is there is no mechanism for recognising 'X' as Aboriginal cultural obligations. The government and court system do not acknowledge Warumungu responsibilities to navigate not only Warumungu cultural obligations but also the additional and separate duties and obligations to the imported law and customs of the current settler state apparatus.

Discussion

Justice demands that not only the ends are right, but so too the means. If that is the case, then what is required is a justice framework scaffolded by Indigenous ontologies. These ontologies must be 'knowable'. Until they are, like Apanui and Māori in general, the Aboriginal Australians live within the fracture zone of two competing governance systems. Indeed, even although the end has been successful for Warumungu, without reference to a justice framework steeped in Indigenous ontologies, the Commonwealth Government of Australia has subsequently nominated a new site in South Australia on land 'owned' in fee simple title by a non-Aboriginal Australian. This has plunged the Adnyamathanha people into the mirror image of the Muckaty fight. Even if Australia had a Bill of Rights, unless it included specifically Aboriginal ontologies, Aboriginal peoples' lifeways, philosophy, and Law would remain systemically unknowable (Dotson & Whyte, 2013) within the administrative system.

As the chapters have unfolded here, three key themes have been developed that, it is argued, must be addressed for justice theory to meet Aboriginal and Māori on their own terms. To decolonise, to be just, the theory must not require that Aboriginal and Māori conform to Western ontologies if they are to seek and receive intergenerationally or environmentally just outcomes. Within the settler states examined here, it is argued it is the settler theory that must make the adjustment to achieve a just outcome for the First People. To continue to apply a liberal philosophic and political framework is to continue the colonial hegemony. It is to continue the injustice of forced assimilation. It continues the pattern of violence, domination, repression and invalidation of alternatives to Western ways of being.

The three themes include firstly, a more-than-material concern for nonhuman and obligations to pass healthy territories to future generations, as conceived by *kaitiakitanga*. Secondly, the exploration of *kanyini* demonstrated a belief that strong communities are necessary for individuals to flourish, as opposed to the liberal claim that community strength derives from a state of individualism. And finally, in this chapter the concept of *country* as a living, communicating being, a source of Law and knowledge, a companion to human, of whom human is one extension, and to which human-of-that-country have never-ending and deep intergenerational obligations and duties has been explored.

The questions to be addressed in the next two chapters related to how the environment's self-interest can be validated. In what, beyond a simple human speech act, can it be grounded? On what philosophical basis is environment afforded weighty interests that compel the powerful, profit-seeking, individualised human, to weigh nonhuman interests equally and equitably against her/his own?

> Woman's voice
> In our land, our connection is only traditional things, gathering food and all that and doing traditional dances.
> We don't believe on that [nuclear waste] because it's poison. You can't give your country away for money. (beyondnuclear, 2010: 9:40minutes)

What will support this woman's claim?

Section 3 New Blueprints

Chapter 7: Walking Backwards into the Future – something more than now

The Fly, the dragon fly, and the bee that we observe flying next to us on a sunny day do not move in the same world as the one on which we observe them, nor do they share with us—or with each other—the same time and the same space.
(Agamben, 2004)

Whakangarongaro he tangata
Toitu he whenua
Time passes but land endures

The idea of time silently, even subliminally, underscores the idea of IJ. Generations live in and at different time(s). Paradoxically perhaps, scholars of IJ don't examine time itself. Indeed, Love and Tilley suggest '[c]hronologically, temporality may be the most taken-for-granted Western social discourse' (Love & Tilley, 2013). The ontological assumption is time moves forward, the philosophy and politics of IJ, and IEJ exist in the now and look to the future. In Western imagination time's arrow describes a progressive arc. A commodity to be lost, used wisely, but never to be wasted, time is measured by sun and moon, by light years and parts of seconds. It is something that elusively stands still, drags, flies and repeats itself. It's deep and fleeting, dark and illuminating. And yet, this understanding of time is not universal, as has been constantly alluded to in the previous chapters. Here and in the following chapter, I will be delving more deeply into two foundational aspects of Aboriginal and Māori worldviews—focusing on Māori ontology, and including Aboriginal similarities. Until now the chapters have, from a Māori or Aboriginal perspective, artificially separated human from nonhuman, and past, present, and future. In the next two chapters the entanglements from which these antipodean ontologies grow is given greater attention, firstly by focussing on time, and then, in Chapter 8, looking at the idea of dignity. Critically, this chapter turns to how this natural 'thing', time, is constructed, and then, how our view of time can alter our view of IEJ. Engaging with the Aotearoa identities Te Awa Tupua and Te Urewera, I imagine time from within these identities' own ontologies and examine how that might generate potential and applied value for IEJ. If the Western ontology of time shapes our view of IEJ, the fundamental question here is, Have IEJ theories been colonised by a hegemony of mechanistic and purely linear time?

In the twenty-first century, when the academy and civic society raise questions of IEJ, it is most frequently in contexts of environmental justice, environmentalism, climate change and

the Anthropocene (see for instance Caney, 2008; de-Shalit, 1995; Gardiner, 2011a; Page, 2007a; Parfit, 2011; Stern, 2007). Politically IJ is harnessed to justify budget constraints.[119] In times past IEJ, focusing on issues of distributive justice, sought to protect the living from overly benefitting their heirs—creating structures to ensure too much was not gifted to future generations at undue cost to the gifters (Caney, 2005; Gardiner, 2011a). Cost-benefit analysis (CBA), the economic expression of this distributive (and often utilitarian) approach, and ubiquitous measure of the worth of government spending, contentiously discounts future costs—generally limited to near future (100-150 years).[120] Given the environmental impacts of current policy and investment decisions will continue into the deep future this seems to unfairly skew benefits to the living and disadvantage future generations (see for instance, (Caney, 2008; Nordhaus, 2008; Page, 2007b; Parfit, 1984; Stern, 2007; 2009b). Poisons and pollution, deforestation and over fishing, climate change and nuclear waste reverse the onus: concern now is focussed on limiting (quite possibly existential) harms to many future generations.

While there are many theorists of IJ it is the philosopher Derek Parfit who has, arguably, identified the most perplexing hurdle for theorists to jump (Heyd, 2014). Parfit's reasoning is pragmatically important too: the non-identity problem is a powerful (almost mesmerising given its recurrent referencing) philosophical expression of political paralysis on issues of IEJ. That is, the non-identity problem strongly justifies political privileging of the present. Since he described the problem (Parfit, 1984, see pp 351-379) many theorists have addressed the challenges it identifies. Some acknowledge it (sometimes obliquely) and set it aside e.g. (Ball, 1985; Bell, 2011), others work beyond its individualist and contractual confines e.g. (de-Shalit, 1995; Hiskes, 2005; 2009). Others have even wrapped it within descriptions of paradigmatic moral corruption (Gardiner, 2011a). None, however, have critiqued, as far as I am aware, his covert conceptualisation of uni-directional time.[121] It is an assumed norm (Love & Tilley: 2013).

The following chapter first reviews how CBA deals with time, followed by time-relevant reflections on the non-identity problem. It is against the CBA and the West's burdensome

---

[119] See for instance the Australian Government's 2015 Intergenerational Report at http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/2015-Intergenerational-Report.
[120] I note also the time is an essential unit in capitalism, measuring as it does one component of the value of an individual's input to production, revenue, profits and ultimately individual worth to the corporate and nation.
[121] I'm not talking here of space-time in the Einsteinian sense, but rather of a cultural perception of time (or times) and the way it is used in politics, philosophy and personal life. In this sense of time as past present future rather than as minutes and seconds.

hegemonic time this piece pushes. Next, an examination of the question: What happens to our imaginings of decolonial IEJ if we think, within an indigenous ontology, of generations living not in competitive sequences, but as living synchronically? This is done through personal reflection and an examination of time from the perspectives of the Whanganui River-Te Awa Tupua and the Te Urewera. Finally, the potentiality for IEJ theory based in an ontology where there is no 'competitive historical progress' (Muecke, 2004: 8:), one in which ancestors, the living, and future generations are part of a recurrent spiral or circle of time and being-in-place is examined.[122]

Accounting for Collective Future Goods

The focus of governmental and political discussion most often concentrates on national economic performance; it is a primary measure of government effectiveness. Formulations of public policy stress the economic benefits of projects: the numbers of jobs created, the revenues generated, the financial value to the community. In Australia, for instance, the Australian Treasury Department, on behalf of the Federal Government, is required to publish an intergenerational report every five years.[123] These focus closely and almost exclusively on economic benefits. Where the environment and climate change may be mentioned (and their prominence varies markedly report to report) the value of the nonhuman is inevitably couched in economic terms. The tool used to make calculations about the value of government spending projects is the CBA. What is important here, is that the CBA moves beyond the individualism we examined in the last chapter: it is a tool for deciding the collective good to society of political policy and projects.

It is uncontroversial to expect that those who spend others' money—like governments—must be accountable for that spending. The CBA as a tool is used to calculate and express the value of any particular project and to assess 'society's 'willingness to pay' for it' (Stern, 2009b: 80). Put simply, the CBA compares the project's costs with the perceived future value of the benefits, the sum total of social welfare. This becomes problematic for IEJ when the costs to the living are eventually calculated to be too great compared with the benefits current

---

[122] Meucke was using this expression to discuss the possibility of *cultures* living synchronously, identifying that Indigenous cultures are and were already always 'modern': they exist in the present, in 'modern time. His argument relates more to place than time, however I adopt the phrase here as it speaks effectively to the context of the discussion to come.

[123] See the Australian Government website at http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/2015-Intergenerational-Report.

sacrifices will bring far future people. The CBA can be effective when the projected period over which the benefits will accrue is close to the present because the future value can be reasonably reliably calculated. However, there are two significant issues. The first is that the calculation includes a 'discount rate' for the future, based on two key and problematic assumptions. The first is that people and communities will be better off in the future, and therefore that a dollar in today's terms will be worth less to them (Stern, 2007; 2009b). Second, it is assumed that people always value that which happens in the near term more highly than that which happens later (Parfit, 1984). With regard to the first assumption, the understanding is that the further into the future, the greater the accumulated wealth will be. The further 'forward' the projection the higher the relative cost to the living; therefore, economists apply a greater discount rate the further into the future the plan extends. This is problematic for IEJ when it promotes a discount, or inaction, on major environmental harms such as long-term contamination, radio-active waste disposal, or climate change.

Secondly, economic theorists argue for 'pure-time discounting'. That is, they argue that we should discount the future simply because it is the future (Stern, 2009b). In this view, people of the future, those unknown others, are not as valuable as our (known) contemporaries and heirs. Sir Nicholas Stern validates the use of the pure-time discount rate in his Stern Review of Climate Change (Stern, 2007) because the rate of current environmental damage threatens the very existence of future generations: we cannot, he says, have any certainty 'about whether future generations will exist' (Stern, 2009b: 83). The sacrifices made in the present may be meaningless in the far future.

Both of these arguments are reasonable (if contradictory): history does suggest future generations will be wealthier and ecological destruction does draw a question mark over humanity's longevity. The ethical issue, the matter of justice, is immediate costs and pure time discounting (along with the individualism of the non-identity problem) are used to justify taking minimal, or worse, no action to limit environmental damages in the present.

The point at which current costs are deemed valueless to future generations depends on the discount rate applied. Stern chose a rate of 0.1% in the Stern Review of Climate Change, justified only by the possibility of an (unknown) extinction event, otherwise, he contends he would apply no discount rate (Stern, 2007; 2010). Climate change contrarian Bjorn Lomborg, on the other hand, applies a rate of 5% per annum (Gardiner et al., 2010), because he argues the rate of climate change will be slow and technological advances (in climate engineering for

instance) will minimise the impact on future generations. William Nordhaus calculated a discount rate of 4% per annum is reasonable, a rate he has subsequently acknowledged as much too high (Nordhaus, 2008; 2016). At these rates, it becomes easy to suggest the costs to the living are simply too great to take action, particularly when damage will primarily be felt hundreds and thousands of years into the future (Gardiner, 2009).

As Simon Caney and Steve Gardiner note, however, the CBA ignores the normative in favour of the numerical. It is unable to calculate the wrong of taking benefits while knowingly inflicting harm on (unidentified/unidentifiable) others (Caney, 2008; 2010b; Gardiner, 2009; 2011a). Perhaps more relevant in the Indigenous IJ context, the CBA as designed explicitly endorses pursuit of short-term investments, ongoing growth, and resource exploitation to generate that growth. It is bound within the neoliberal and capitalist paradigms and applies no intrinsic value to future generations or nonhuman integrity.

While the CBA can be an effective tool for calculating infrastructure projects like bridges and roads it is not a tool that can be applied on very long time scales: there are simply too many unknowns to make the selection of key values in the calculation meaningful (Stern, 2009b). Because the CBA discounts the value of future persons the best it can be is 'a crude rule of thumb' (Parfit, 1984: 486). It becomes a tool of paralysis (Gardiner, 2011a) and disadvantage to future generations and, as I will explore shortly, of no advantage to calculating value within a nonhuman ontology of time. A ubiquitous government calculus—really one of the core mechanisms for evaluating public policy—CBA embeds an ideology of 'competitive historical progress': the living are calculated to be competing with future generations for resources, and the value of those resources is calculated to be more valuable now than in the future. Simply put, the CBA aids governments in discounting the future, and future generations.

Parfit & Time

Parfit offers a different problem at the intersection of normative justifications for public policy and the issue of time and generations—that of our relationships to future relations. Individualism is profoundly important to Parfit's ontology of time. Parfit's dilemma, if I can put it that way, is that what we do in the present, the small actions we take—the decision to walk down this street not that, attend his party, not hers—will determine with whom we have a child. One small 'other action' will mean we fail to meet the person with whom that child will

be conceived. So in my case, if my father, an engineer, had not been moonlighting as a radio newsreader on the night my mother happened to play the piano for the same radio station, there would be no 'me'. The coincidence of time is at the nub of Parfit's problem of the identity of those to whom we owe obligations.

Parfit confines his argument within the boundaries of a forward-looking time. His theory is bound by singular points on a continuum pitting living people in competition with future people. He straps contemporaries firmly to a present and engages solely with those we may individuate and identify. He describes a competitive sequence in which living identifiable individuals plunder and pollute the earth, without obligation to unidentifiable potential beings of time to come. This summary is, in part, unfair to Parfit, for he starts and maintains the enquiry from a position of intuitive disquiet: these harms feel wrong for they are or will be harms to persons (Parfit, 1984: 351- 379 & 480-486). And he acknowledges normative unease: after all, to do no harm is foundational to ethical thought. However, locked within Western epistemology, and because he is considering future persons only, Parfit overtly places time in a time-and-space-continuum forever moving forward, in which its ontological import exists now and later only in discrete instantiations—embodied in those we can never know. This non-identity problem is entirely consistent with 'European ideas of time as linear' (Love & Tilley, 2013: 174). It looks only one way.

Parfit's individualism and Avner de Shalit's communitarian IJ were earlier tested against the view of self and community presented in the Anangu philosophy of *kanyini*. The Anangu understand themselves to be constituted within timeless relationships between beings, living and non-living, human and nonhuman, grounded and transcendent. *Kanyini*, and the principles of *kaitiakitanga* exist within unbounded interspecies synchronically intergenerational relationships. Parfit's ontology is unable to accommodate either philosophy, and while engaging with intergenerational community effectively, de Shalit's theory is anthropocentric, privileging humans, and placing primarily instrumental value in the nonhuman. It is, therefore, unable to accommodate intrinsic value in nonhuman in the way *kanyini* and *kaitiakitanga* demand.

While a communitarian IEJ may transcend the individual, eliminating many of the encumbrances that individualism places on IJ, it remains true to Parfit's forward projection of time. Obligations to ancestors, reflection on inheritances from ancestors, and concomitant obligations to pass similar inheritances forward are overlooked.

Two issues arise from Parfit's anthropocentric, individualistic and forward-looking-time approach that are important for decolonial IEJ, both manifestations of liberal Western philosophy. To reiterate, the first is by giving pre-eminence to the individual as the most significant social unit, he ignores *peoples, communities, cultures and collectives of people and all nonhuman entities*—it is the individual human person only to whom he gives consideration. The second issue is Parfit's imaginary of time moving endlessly and only forward. Past people and peoples are not important to his argument. His moral considerations engage living and far-future individual human beings, in particular, that is the generations with whom existing lives will not coincide. The sacrifices of former generations which benefit the living are not given significance, nor assessments of resulting obligations to continue the practice of 'paying forward' by beneficiaries of any historical beneficence. His sights are set into the near and far future of individual liberal contractarians. So too are those of his critics, Edward Page excepted. You might argue this reasonable because the conundrums of IEJ are related to the future, however, this idea of a time's straight line, of past being past, lived and buried is not universal and this is critical to conceptualising decolonial IEJ.

Edward Page & Ancestors

In contrast to Parfit, Edward Page suggests that IJ could be considered through the lens of reciprocity, 'considered as either mutual advantage or fair play' (Page, 2007a: 226). This he claims will assist overcome the impossibility of establishing contracts with (non-identifiable) future individuals, and does not require us to reduce the scope to 'preserving the values of one's community' (ibid). To do this he gives weight to the benefit inheritances from ancestors places on obligations to future generations. He reflects on time past, present and future.

Page is critical of the neglect of ancestors and suggests we need to consider past generations in our calculations. Engaging with the field of global distributive justice, non-identity per se is not for Page the stumbling block to IJ. The problem is one of reciprocity. 'If reciprocity', he says, 'determines the scope and content of justice, future persons have no claims against their ancestors' (Page, 2007a: 232)—an objection also raised by other scholars (see for instance, (Kumar, 2003)). However, Page suggests we must, under conditions of global distributive justice, also consider that the living inherit goods from

previous generations. This inheritance then gives them a positive start, a platform of advantage from which they fashion their own benefits and goods. With this inheritance, argues Page, comes an obligation to also pass forward goods, goods if not identical to, at least as good as those inherited. That is, the reciprocal 'thanks' to ancestors is realised as 'gifts' to future generations.

In terms then of IEJ it is important that the environment is in no worse state for future generations than the state in which it has been inherited. In this sentiment, of course, we hear strong echoes of the essence of *kaitiakitanga*, the Māori obligation to improve the environment. Indeed, Page identifies his formulation of IJ as a form of intergenerational stewardship. For Page, the obligation, borne of 'the idea of reciprocity as fair play' (ibid: 226), is not necessarily to pass to the next generation exactly the same environment, so long as resources and the environment are not significantly degraded or destroyed. In this way, there are limits on how much one generation may help themselves to. Rather than abandoning reciprocity altogether, he suggests adopting a form of intergenerational stewardship where 'existing persons are bound by duties of indirect reciprocity to protect environmental and human resources for posterity in return for the benefits inherited from their ancestors' (ibid: 233). Page's solution identifies human communities are continuums from ancestor to living to future generations ad infinitum, in which no one generation arises in a virgin void from which they alone create, for instance, wealth, science, knowledge, or social order, independently of those who can before. Lives of ease and wealth are built upon the work of earlier generations and depend on a climate system conducive to human flourishing, clear air and waterways, stable and productive soils, ample (uncontaminated) forest, fish and agricultural produce to sustain the number of humans on the earth.

Page extends the examination of time to generations before and after the living. However, his solution remains, like Parfit's, anthropocentric. Within his discussion, he ignores the preservation of nonhuman for nonhuman. In his representation of IEJ, the preservation and obligations attached to stewardship are for the benefit of future generations of human beings. While the net result may be the protection of nonhuman, this is a happy happenstance as it were. He expresses no normative obligation to nonhuman. In sharp contrast, in both *kaitiakitanga* and *kanyini*, there are normative obligations to nonhuman, and these obligations require a non-Western understanding of time.

Synchronic Generations

> Within Māori ontological and cosmological paradigms it is impossible to conceive of the present and future as separate and distinct from the past, for the past is constitutive of the present and, as such, is inherently reconstituted within the future.
> (Stewart-Harawira, 2005: 42)

Returning to Parfit—who identified that IJ is extremely hard to theorise from within a contractual individualist paradigm even when the theorist is intuitively favourably disposed to protecting future generations from environmental harms. His argument is that it is significant that my father met my mother. For that is why I am. Without that synchronicity, I would not be. And while that is now a matter of history, such synchronicity is morally significant, because it means we cannot predict the individual identities of future generations of people. Without identities, we cannot form sets of contractual obligations and duties with these unknown people, even though we know with some certainty, individual people will exist in the future. What is important to Parfit is that I am an individuated I, a stand-alone I, an I who is not an other I. My argument here is that a critical element of the conundrum Parfit established arises not only from his understanding of what it is to be human but also his understanding of time.

Now let me paint another picture of who I am, one I trust will illuminate more personally Makere Harawira-Stewart's representation above.

I am arguing here that time is neither irrefutably a forward moving measurement of space as represented by science (which it is for the purposes of science but not in all forms of knowledge, nor for my purposes) nor an ontologically neutral concept. Consider for a moment this possible spiral: I have ancestors; I live now, and I have children who will (all being equal) continue to live when I am gone; and I will have grandchildren (all things equal), etc. While I am living, I am also a (potential) ancestor, and my living children were once a future generation to me, as are my potential grandchildren, as was I to my ancestors. In time I will be an ancestor as will my children and my grandchildren will be living and thinking of future generations. The generations are co-existing, the past is always in the present, and the future is always in the past.

Let me express that even more personally. I will recite a very personal whakapapa. I am the descendant of: Polynesian Pacific explorers who settled Aotearoa New Zealand and formed the iwi Ngāti Kahugnunu; one of the first Royal Academicians; one of few eighteenth-century women to exhibit at the Royal Academy; a Royal Navy explorer, geographer and artist;

Scottish immigrants to Ireland whose descendants then fled to Aotearoa New Zealand; slave-owning cotton growers from British Guiana; a Channel Islander guard of the Tower of London; a WWI soldier, a WWII POW. These people, and many more besides are my ancestors, and I am a member of their future generation for whom they, their heirs, and their ancestors left known for new shores and better lives for their heirs. Simultaneously, I have a son and a daughter. In them live: the same ancestors; their father and his ancestors; and me. And they are my future generation and the potential creators of even more future generations. And soon I and they will be ancestors to new generations.

Where I view the 'I' that 'I am' as an integral part of those who have been and will be the boundaries of 'I' dissolve, and with that boundary-blurring the import Parfit attaches to identity also dissolves. I am, I embody, at once: ancestors, future generation, living, and ancestor. Rather than a notion of time as forward moving through space it becomes instead spirally bound and emplaced/embodied. I am concurrently future generation, living and ancestor. My being and knowledge oscillate between ancient and modern, current and future.

One might argue, also, the I that I am embodies additionally knowledge and ontologies derived from non-kin ancestors. That is, I have inherited more than just genetic material. Euclid and Pythagoras live on in my (sadly rusty) mathematical skills. I/we am/are direct heirs/beneficiaries of the discoveries of Jenner and Marie Curie. The thinking of Aristotle and Aquinas, Kant and Spinoza, Hobbes and Locke all infiltrate my/our thoughts. Knowledge of plants of Aotearoa—their medicinal and nutritional values, stories of the land, an ingrained habituated respect for and empathy with nonhuman, these are learned from the ontologies and knowledge of the people with whom my ancestors and I engage, from whom we have descended. The I that I am is an inherited amalgam of ontologies and knowledge acquired both consciously and subconsciously. The creators of knowledge are at once ancestors and living in current thought and have the potential to continue to vibrate in the lives of future generations.

And there is more to who I am, an even older I. For in my bones are the traces of the minerals drawn from the volcanic soils of Taranaki in which my father grew our fruit and vegetables. In my muscles memory of leaping from boulder to boulder on the wild winds driving salt, iodine, assorted minerals into my lungs and skin. In my skin and nerves stay the vibration of the sand-hills of Bell Block and the cliffs of Back Beach, the thrill of Paratutu ascents and descents, wild ski runs down Taranaki's slopes. In my brain the peace of the Stoney River, of

peripatus,[124] vegetable caterpillar[125] and native orchid hunting in the forest, moss and decay on the slopes of the mountain's foothills.

My biome, which biological research is suggesting determines much of who I am (Yong, E., 2016), is likely bearing remnants of the cows, pigs, horses, cats, dogs, lizards and pukeko which at various times shared my homes and life. I am intimately entangled with and a continuation of all these components. The moment 'now', is at once past, present and future: was, is and always will be. Here I am exploring ways of thinking time that can encompass all that basket of ancestry—genetic, intellectual, mythological, biological, mineralogical, ontological, physical and experiential.

If, when contemplating IEJ, we embrace an ontology of embodied intergenerational coexistence with both human and nonhuman will that alter our perception of our obligations? Does the idea of being an ancestor—with all the cultural meaning imbued in the concept of ancestor, one who lived before and 'gifted' to the living genetic material, culture, traditions, rituals, knowledge, built environments, material goods and all the other things that make up memory and the essence of being human—living synchronically with future generations—alter how we imagine IEJ?

Before answering that question directly, I'll move from this personal human ontology to begin to imagine an econtology of time for two geo-regions in Aotearoa New Zealand.[126]

---

[124] 'Onychophorans are better known as peripatus, or velvet worms. The New Zealand peripatus are secretive, caterpillar-like animals, with soft, unsegmented body, velvety in appearance. They are 2.0-8.0 cm in length, slow-moving, with 13-16 pairs of soft stumpy legs' (see Hilke Ruhberg http://soilbugs.massey.ac.nz/onychophora.php accessed 30 January 2017.

[125] Vegetable caterpillar are the caterpillars of a native moth that become infected with a fungus, which after absorbing the caterpillar's nutrients mummifies the caterpillar. They are a traditional Māori ingredient of the ink used for moko (tattoo). (See http://www.teara.govt.nz/en/photograph/11587/vegetable-caterpillar-fungus, and https://www.sciencelearn.org.nz/resources/1435-vegetable-caterpillar, both accessed 30 January 2017.)

[126] Econtology as distinguished from Elizabeth Povinelli's geontology. Here it is meant as an all-inclusive ontology of geological form and ecosystems rather than an ontology that distinguishes and separates of living/non-living form to justify human power and capitalist accumulation as used by Povinelli. It is, in this sense, the antithesis of geontology.

Non-competitive Historical Progress

> … when Gladwell talks spontaneously he ransacks the past, its physics and philosophy as well as its art, to make a history that leads to him. He's the scavenging opportunist every serious innovator has to be. … The videos are about ease or difficulty in moving though this space, and the greater difficulty of staying still in it. Australia's Indigenous art takes all this as a given, and represents a way of being in time and space that people with differently educated eyes and differently lived lives have to learn to see.
> (Robb, 2012: 8-9)

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

As I recited parts of my *whakapapa* above, I was looped within, reaching for, drawing from an understanding of time as spiral, looking behind within the present to inform the future from the past. I am the 'scavenging opportunist' compiling a being who 'leads to' me, to paraphrase Peter Robb above. Each reference in the present has an anchor on a spiral of time that 'differently educated eyes and differently lived lives [might] learn to see'. This is not a straight line projection—it is both generative and regenerative.

I transition now from the personal to a political solution for representing the nonhuman in Aotearoa New Zealand—granting legal identity/personhood status to geo-regions, specifically the Whanganui River system from the mountains to the sea (*Te Awa Tupua*) and *Te Urewera* a complex of forested ranges, rivers, lakes and settlements. I want to consider how that might realign human relationships to time beyond the mechanistic and forward thrusting representation of time we are accustomed to in the West.

This legal creation of 'personhood' or 'identity' in the two regions is heralded as revolutionary (Salmond, 2014). And to Western legal minds, to Western political minds, to Western philosophers it is. For the *Atihaunui-a-Paparangi* (Whanganui Iwi) and *Tūhoe* (of the Urewera)*,* it's a returning, a reinstatement of what has always, is and will always be (Hutchison, 2014). Human and nonhuman share whakapapa in which human is not elevated above other. Human are the younger family member, the *tiana* (Gage: §31: 5), within a complete whole of 'being on the planet' - not beings but being on the planet earth. I am not, however, exploring this metaphysics here, I do that in the next chapter. What is important here is that which reveals itself as revolutionary when these agreements are thought through to what might be considered a startling conclusion. Indeed, as Anne Salmond suggests above, it is an opening to possibility. While the stated intention is to 'preserve natural and

cultural values' (New Zealand Government, n.d.: 13), Te Urewera geo-region is now declared 'to be a legal entity with the full capacity of a legal person' (ibid.: 13), and the Te Awa Tupua Bill states that it 'is "an indivisible and living whole" and comprises the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements and is a legal person with all the rights, powers, duties and liabilities of a legal person' (New Zealand Government, n.d.). This language suggests the neoliberal government has reached a settlement with Māori to 'manage' these geo-regions not from within specifically Māori or Pākehā culture and ontologies, but from within *Te Awa Tupua's* and *Te Urewera's* own ontologies.

It is worth stopping for a moment to consider the term 'settlement' itself implies a temporal full stop, is redolent with connotations of time ending, of a finality and fixedness (Love & Tilley, 2013) that is itself challenged in what follows, for nothing is static within a geo-region. To contextualise the discussion on imagining an econtology and to understand this always already changing, what follows is a brief outline of the regions' physical presence and being.

The Whanganui, an extensive river system, runs from the lava, ash and snowy flanks of Mt Tongariro through rugged ranges and dense podocarp forests tumbling over boulders sliding still through gorges to the plain that holds Wanganui township across a bar of rich black iron sands to the Tasman Sea. The Whanganui is not an inanimate, insensible, thing. It's a living force providing energy and life force to *its* people, the peoples of Whanganui iwi. Hence the statement of belonging and being of its people:

> *E rere kau mai te Awanui*
> *Mai i te Kahui Maunga ki Tangaroa*
> *Ko au te Awa, ko te Awa ko au*
> The Great River flows
> From the Mountains to the Sea
> I am the River, and the River is me

Similarly, Te Urewera and Tūhoe are conjoined—together the 'children of the mist' (Best, 1925). Thrust up as the Pacific Plate meets the Australian plate it's a range of layered and folded sandstone and mudstone, covered in dense, really dense, forest dotted by pristine deep green lakes serenaded by fabulous birdsong. The region and lakes were previously held as national parks by the Crown. And for Tūhoe it is kin. And Te Urewera and Tūhoe identity are conjoined (New Zealand Government, n.d.).

This designation of personhood is part of the Treaty of Waitangi settlements process, the idea of 'settlement' itself bound within the dominant temporal discourse, with closure required

before a new advanced stage, progress, commences (Love & Tilley, 2013). The settlement is designed to restore autonomy and self-determination to Ngāti Tūhoe, as they might expect under the terms of the original Treaty. However, if time is circular or a spiral of multi-layered times, as I have suggested above, there can be no finality, no endings. There are no discrete historic phases. Under those conditions, we must ask if there is an endpoint for Te Awa Tupua and Te Urewera to reach. This is getting ahead of the discussion.

Iwi and the Crown have agreed, *for the purposes of human understanding*, these two regions re-engage their Māori identity-form-representation. Their being is to be respected within Māori ontological structures, not those of the West, even though a Western legal mechanism has been deployed to embed the move within the dominant administrative and political structures. That is, the colonial and capitalist understanding, structures and practices of geontology (Povinelli, 2016) are replaced by an econtology. These identities are no longer to be understood as inanimate spaces, as plots on a map, as property legally owned by individual or collective humans. They are no longer inanimate resources available for allocation, plunder and representation as wealth, nor economic units. The Bill granting personhood to Te Urewera, for instance, 'recognises the mana and intrinsic values of Te Urewera by putting it beyond human ownership'.

Mana is a term of respect-worthiness. *Mana* is intrinsic and earned. *Mana* both recognises and contributes to the dignity of the bearer. That which bears *mana* is a subject not an object. Te Awa Tupua and Te Urewera are subjects, no longer enslaved by the neoliberal capitalist geontology. The distinction between living and non-living, rational and insensate, capital accumulating and exploitable underscoring geontology is shattered. Te Awa Tupua and Te Urewera have interests, rights, powers and duties—they have *mana*. This suggests they are decision-makers—albeit decision-makers without human speech. This lack of speech is, as we know, no impediment to respect and dignity-bearing in human—think of babies, the comatose, and otherwise mute. Mute humans are represented by guardians, *kaitiaki*, who act on their behalf, in their best interests, who act as if they were the mute person. So too Te Awa Tupua and Te Urewera now have guardians, *kaitiaki* who must speak for the interests of each, as if they are each.

How does a human guardian represent the interests of a geo-region? How do they think as a geo-region? This is a complex and expansive question: while others have discussed the legal and practical mechanisms, for the purposes of this chapter only one small corner of the

demands on the *kaitiaki* is under consideration.[127] How might we imagine a geo-region conceives time? And, crucially for the question of IJ, how must the *kaitiaki* think of time as if they are Te Awa Tupua or Te Urewera?

How long have these geo-regions been? How can a human understand their geo-ontology, bio-ontology, zoo-ontology—their econtology? What is their time? Since the beginning, since the time the first ancestors *Ranginui* (the sky) and *Papa-tūānuku* (the earth) lay in embrace (Mead, 2003; Walker, 1992). And for all time in some form.

The slopes of Tongariro, an andesitic cone, have built up in successive volcanic eruptions, the material spewed from the depths of the earth, melted from crust thrust under the dominating Australian plate. So the materials of the mountain date from all time. The first eruptions were probably flowing about one million years ago (K. Williams, n.d.). And the Whanganui River wends its way through ash layers, papilla, pumice, and lava fields, spectacular papa—mudstone—cliffs, folded sandstone ranges, picking up and depositing materials all the way down to the 'modern' floodplain to the iron sands of those temporary post-glacial beach formations along the land's ragged edges.

The ranges of Te Urewera are older, the base greywacke formed in sedimentary layers 150-100ma in the late Jurassic early Cretaceous periods. They are old and ever-changing. The greywacke, overlaid with sandstones and mudstone were formed tens to thousands of kilometres to the north and migrated here on a slip fault plane as the East Cape allochthon. But older still, the sands and muddy deposits were previously swept to sea from an earlier landmass, floating out from Gondwanaland, sunk in successive layers, pressed and pressured into compact layers of rock, embedded with seashells and skeletal remains, sliding along the edges of the Australian plate and forced back up into craggy, furrowed towering ranges (Thornton, 1985). The lakes, the famed Waikaremoana, the charming Waikareiti, what is their time? The rivers that erode these ranges carrying sediment out to sea to be redeposited, re-pressured and reheated into compact layers of new rock. What is their time? They are younger than the ranges, they are older than trees, older than the weta, kiwi and kakapo yet their waters renew each day. How is time imagined for a river? How is that idea of time to be considered by those not-river?

---

[127] See for instance Carwyn Jones, Jacinta Ruru, Māmari Stephens in a special edition of the Māori Law Review October 2014. Also (Arif, 2015; Barraclough, 2013; Hutchison, 2014; Vines, Bruce, & Faunce, 2013).

What is their time? As their guardian how do we measure responsibility for them, *as them*, into the future? Parfit, and his protagonists, embodying mechanised time, 'think of their location in time as similar to a stream, backs turned to the past, poised in the present, facing the future, being carried relentlessly into the future, and never arriving' (McKay & Walmsley, 2003: 92). Time is here 'squeez[ed] … into the spatial present' (Awatere, 1984: 61-62 in (McKay & Walmsley, 2003: 91). Māori *kaitiaki* for *Te Awa Tupua* and *Te Urewera* bring a different understanding of time, one that does not lead 'to a devaluing of the past, knowledge of the past, and experience' (ibid.). 'The Māori space-time construct can be thought of more like a constellation with the past and the people of the past always felt in the present, like the constellations of the sky to the voyager—enmeshing, surrounding, always before you, always behind, forming patterns that can be interpreted in various ways' (McKay & Walmsley, 2003: 92). As with Australian Aboriginal peoples, the past and ancestors live in the present, tangibly presenced in carving, art, trees, rocks, rivers, formations (Bird Rose, 2011; 2012; Povinelli, 2016; Randall, 2003). For *kaitiaki*, the 'physical world provokes remembering—rather than focussing on the immediate spatial world and its [economic] possibilities' (McKay & Walmsley, 2003: 90). Relationships and links, continuity and continuation are the primary parameters of time and space, or as Ranginui Walker said it, 'the Māori faces the present and the past which are in front of him (sic). In this time-frame he has before him the living, their forebears, the dead, the founding ancestors, the cultural heroes of mythology and the gods back to the primaeval pair Ranginui and Papatuanuku' (Ranginui Walker in McKay & Walmsley, 2003: 92: 59-60). When the living draw from the past firm in the knowledge they will become ancestor (Int. HS), their intergenerational obligations span all time.

All-time-past interests humanities scholars and geologists/palaeontologists as they wrestle with the implications of the Anthropocene. Following the tradition established in the eighteenth century James Hutton, (1726-1797) the Scots 'father' of geology, as he explained geological processes of erosion, sedimentation, uplift, erosion, etc., in opposition to the biblical creation myth, they use the term deep time. As Jan Zalasiewicz and others encourage the geological community to accept we have entered the Anthropocene (for instance: Crutzen & Stoermer, 2000; Steffen, Crutzen, & McNeill, 2009; Zalasiewicz, 2008; Zalasiewicz et al., 2011), the concept of deep time is gaining ground across the humanities too (see for instance Irvine, 2014, in Anthropology, and perhaps best well know from his TED talk, David Christian, 2011, on Big History). Minimising the presence of human on earth, reducing human time to the shaving of a fingernail through the breadth of time, deep time/big history remains, however good the intention to encourage ecological conscience and responsibility (see

again, Christian, Crutzen, Steffen and Zalasiewicz and many others), resolutely mechanical and linear. Deep time measures epoch and era, marking off golden-spiked boundaries as a progression.

The very purpose of coining 'Anthropocene' is to indicate the end of one epoch and the beginning of another (Crutzen, 2002; Crutzen & Stoermer, 2000; Zalasiewicz, 2008; Zalasiewicz et al., 2011). The Anthropocene marks a point in the record from which there is no going back as the work on 'tipping points' by Rockstrom stresses (Rockstrom et al., 2009). As forests are removed, rivers and seas polluted, nitrogen is spread over fields and flows in waterways into marine ecologies, top soils are stripped from bedrock, and temperatures inexorably rise the earth will shift from a stable state fit for human habitation to a new stable state unfit for humans and many nonhuman forms. This representation of time has no circularity nor is it spiral, it expresses no synchrony. This is time represented by golden spikes (Zalasiewicz et al., 2011), stops and starts, beginnings and endings, the time of evolution and progressions.[128] While archetypically mechanical it also announces a huge human-induced disruption to the flows of ecological systems and cycles.

Can our representation of time reflect constant creation and recreation in a non-linear way? A non-linear time is certainly not the time referenced by corporate quarterly reports or election cycle budgets nor even their antithesis, deep time. Mountains, ranges, lakes and waterways, and all living matter, human included, have a repetitive pattern, a pattern of birth, change and rebirth of continuity, circularity and synchrony.

How can time be represented in the contexts of Te Awa Tupua and Te Urewera? What is time to a tree? 2,000-year-old kauri, 1,000-year-old rimu, tōtara, mataī, and miro (Bay of Plenty Regional Council) spiral through time: they are individually and collectively living, dead, and regenerating simultaneously. How must one think as their guardian? How must one formulate their best interests? For how long are we planning? Leaves die and fall disintegrating into the soil, sustaining their parent tree and seeds and suckers that are at once their offspring and parent. What is time here and how can we *justly* represent the tree whose time is a present of simultaneous life-death-rebirth? If we go back to thinking about the tool of government, it is clear a cost-benefit analysis cannot account for this concurrent past-present-future time. Its focus is little more than a human lifespan.

---

[128] Golden spikes are markers placed at key points around the globe where the paradigmatic example of the border between one geologic epoch and the next is exemplified.

The Te Awa Tupua (Whanganui River Claims Settlement) Bill 2017 'declares that Te Awa Tupua is "an indivisible and living whole" and comprises the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements and is a legal person with all the rights, powers, duties and liabilities of a legal person'. Similarly, Te Urewera-Tuhoe Bill, 2013, states: 'Te Urewera will effectively own itself, in perpetuity'. However, as a mute member of society 'Te Urewera can only act through human agents' who 'will be obliged to serve Te Urewera and act in its interests, with a unity of purpose and the utmost good faith, rather than acting on behalf of the appointers'. Te Awa Tupua is to be represented by Te Pou Tupua 'the human face of Te Awa Tupua'. Human agents then must speak for the mute Te Urewera and Te Awa Tupua and to do so they must, I suggest, think like Te Urewera and Te Awa Tupua. Thinking like Te Urewera, like Te Awa Tupua, is to step into a perpetual deep time, into a econtological spiralling past-in-present-in-future-in-past, a time with no stops and starts.

Māori play a significant role as guardians for these geo-regions—one of two appointed in the Whanganui Settlement, and fifty percent for the initial 3-year term of the Te Urewera Board, and two-thirds thereafter. The settlements themselves are interpreted as formal recognition of Māori values as much as redress for past wrongs and the opportunity for the health and wellbeing of the entities to be restored using *mātauranga* Māori indicators (Aho, 2014). Importantly, within both settlements, there is strong recognition of the interdependence of human and nonhuman, their indivisibility. Secondly, as 'settlements' they form an apology to ancestors, and their descendants (Government, 2014: Part 3), that is they are trans-generational documents.

The Te Urewera Act 2014 draws on Māori ontology in the background to the Act, so poetically phrased it is worth reproducing here:

> Te Urewera
> (1)   Te Urewera is ancient and enduring, a fortress of nature, alive with history; its scenery is abundant with mystery, adventure, and remote beauty.
> (2)   Te Urewera is a place of spiritual value, with its own mana and mauri.
> (3)   Te Urewera has an identity in and of itself, inspiring people to commit to its care.
>
>
> Te Urewera and Tūhoe
> (4)   For Tūhoe, Te Urewera is Te Manawa o te Ika a Māui; it is the heart of the great fish of Maui, its name being derived from Murakareke, the son of the ancestor Tūhoe.
> (5)   For Tūhoe, Te Urewera is their ewe whenua, their place of origin and return, their homeland.

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

Challenging though this identity may be to those steeped in Western legal scholarship (Arif, 2015), the Act challenges also the Western framing of time ('ancient and enduring'—there is no end and the beginning is before the realms of history) and the animate-inanimate divide ('has an identity in and of itself' and 'with its own mana and mauri'). The ontological foundation is then steeped in these notions of twined care and belonging, neither Tuhoe nor Te Urewera is complete without the other, a connection without beginning or end, within which Māori, as *kaitiaki*, work for the benefit of all. This is then I propose, an ontology which includes the econtology of Te Urewera, or Te Awa Tupua. Within the econtology '[a]ncestors and the generations to come [have] as much interest in the land as the individuals living at any point in time' (Stephenson, 2001: 166). The protocols and traditions of *kaitiakitanga* are 'not passive custodianship, nor … simply the exercise of traditional property rights, but entails the active exercise of responsibility in a manner *beneficial to the resource*' (Ruckstuhl, Thompson-Fawcett, & Rae, 2014). Spiral time and thinking as other, both integral to Māori being and thinking (Stewart-Harawira, 2005), are necessary to benefit the resource.

Descendants of ocean-going Polynesian peoples (McKay & Walmsley, 2003; te Punga Sommerville, 2012), being Māori enfolds an 'elaborate cosmogony beginning with the origin of the universe and the primal parents, then continuing to trace the descent of living and nonliving, material and immaterial phenomena, including humans' (M. Roberts et al., 2004: 21) in common with Polynesians (Henare, 2001). When genealogy weaves all things including the interests of non-human in decision-making, weaving natural and cultural is ever emergent in thinking and practices, the future seen in the past from the present. Ever present engagement with ancestor reminds the living they too will be ancestor, promoting a reflective practice of care and gifting to future generations, much as Page describes, and it prompts more than Page requires, for ancestor are more than human, more than genetic, more than physical.

Discussion

Westerners conceive our planet Earth as an object in space – but space can be considered an illusion. We think we look across space and see the moon or sun, but we actually see the light that left the moon a quarter second ago, and the light that left the sun eight minutes ago. There is physical distance between these objects, but what we see is

> actually the past, we see the sun as it was eight minutes ago. When we look at the nearest star we look back in time four years, when we look across the universe we do not see it as it is in space, we look millions of years back in time.
> (McKay & Walmsley, 2003: 89)

A particular understanding of time infiltrates IEJ theory. The theories, and the practical political and economic design and implementation of policy affecting future generations, assume time is linear, moving forward, the present fleeting, the past disengaged. However, while the present may be fleeting, it is also privileged. And I have suggested these assumptions are hegemonic. They are unable to support the ontologies and lived expressions of some Indigenous peoples—most notably those enveloped in Māori *kaitiakitanga* and Anangu. I have gone further than this, claiming, too, the agreements assigning independent identity to Te Awa Tupua and Te Urewera provoke and require a radical reassessment of time if the terms of the agreements are to be met. While I recognise that technically the agreements are between the Crown and Atihaunui-a-Paparangi and the Crown and Ngāti Tūhoe, and that the terms of the agreements describe guardian's obligations in management terms (See 2:18 Te Urewera Act, and Section 3 of Whanganui Settlement), my argument is that once these independent identities are established in perpetuity, their guardians must engage with the econtologies of the identities to fulfil their legal obligations as the guardians. Their role is not to speak *for* the human-nonhuman entangled persons but *as* these identities.

The CBA concertina's attention and responsibility into a short linear future. Although it is presented as a rational and neutral measure of 'long-term' expenditure, the choice of discount rate reflects the value the user chooses to place on future generations in competition with current beneficiaries. It tends to heavily favour the present and disregards intrinsic worth in nonhuman. We might argue its ontological base is in direct conflict with the econtologies of Te Awa Tupua and Te Urewera.

Parfit's non-identity problem rests upon Western ontology that privileges the living human individual. Under this umbrella, obligations and duties of justice and law are limited to those with whom we can form implicit and explicit reciprocal interest contracts—essentially human beings of the present. Non-beings, humans who are dead and those yet-to-be-born, and nonhuman 'things' are beyond the umbrella's rim. Despite his intuitive desire to protect future generations (of individuals) from harms, Parfit was unable to 'reason' a coherent understanding of IJ based in contract.

Edward Page does establish a clear set of intergenerational contractual agreements, based in reciprocity. He argues the living are advantaged by the accumulations of past generations and thus are obligated to pass at least as good to future generations. There is on his account a requirement by the living to acknowledge the good(s) they are born to, goods that enhance and facilitate their own lives and perhaps good fortunes. Inheriting an environment conducive to wellbeing is one of those goods. If the living are enabled in their pursuits by this inheritance, then they are obligated to ensure that future generations have similar good fortune. To plunder and plague the earth for immediate gratification to the disadvantage of future generations is therefore wrong. In this way, he proffers an understanding of IEJ that protects the environment into the future for human heirs. The benefits to Te Awa Tupua and Te Urewera though are incidental, a by-product of protecting future humans.

And herein lies the quiet genius of Aotearoa's Te Urewera-Tuhoe and Te Awa Tupua settlements. Geo-regions as legal identities are each now an identity-with-whom-the-community-can-engage, and from within which the contractual agreements (tacit or explicit) between geo-region and society can emerge. Geo-regions as persons entangle human-nonhuman. Geo-regions-as-persons encompass time past present future. Geo-regions-as-persons are identities of multiple singularities, with lifespans measured in less-than-days—a droplet of water joining the flowing mass of the river, moths fluttering in the forest—through all time—the beds of sandstone, mudstone and lava over and around which the waters of the Whanganui swish, meander and roar and the tilted mass of the Urewera on which giant trees, ferns and moss take hold. The entity with whom we, humans, are contracting is unbound by individuated human-lifetime-limitations and human-lifetime desires and welfare. Thus these agreements and the responsibilities placed on their voices, their *kaitiaki*, require imaginaries of multiple singularities bound together as one in deep and long time. A time that is synchronously past-present-future, an identity that is simultaneously multiple identities.

Within these two agreements lies an imagining that frees IEJ from the hegemony of the individual, from the human-nonhuman divide and time. No longer in bondage to the vagaries of Parfit's coincidence and synchrony, Te Awa Tupua and Te Urewera are simultaneously ancient and infinitely young, one and multiple, human and nonhuman. These identities are sure in their ontology, unlikely to shift their values with the fashions as have Ball's generations. Established in their identity they 'know' the conditions under which they flourish: the temperatures, rainfall, sunshine hours, soil conditions and composition, air purity and

wind velocities that are optimal. There is no incoherence in their needs into the future. They enmesh the nonhuman within the previously anthropocentric set of entitlements attached in law to personhood; a CBA from this worldview can contain no discounts. The human-nonhuman community's boundaries explode into the infinity of past present future, beyond instrumentalism. The power of Page's debt to ancestors is multiplied exponentially.

Te Urewera and Te Awa Tupua are regenerative entities, that is, they do not die. That does not mean death does not occur. Parts of the living organisms might die, and those parts decay and disintegrate to be recycled within the living, so the essence is re-gifted to the new entity. The ancestor of the seedling stands guard (literally as Peter Wohlleben, for instance, describes in Wohlleben, 2016 and 'sees' enemy as described by Taguiam, 2017) while dropping leaves that fertilise them each. Is time in this sense recycled as with the seasons? The moth, the weta, the kiwi, the tuna, and kakapo may die, but the whole, Te Awa Tupua and Te Urewera remain living.

Aldo Leopold makes a similar point when he says:

> …[l]and then, is not merely soil; it is a fountain of energy flowing through a circuit of soils, plants, and animals. Food chains are the living channels which conduct energy upward; death and decay return it to the soil. he circuit is not closed; some energy is dissipated in decay, some is added by absorption from the air, some is stored in soils, peats and long-lived forests; but it is a sustained circuit, like a slowly augmented revolving fund of life. There is always a net loss by downhill wash, but this is normally small and offset by the decay of rocks. It is deposited in the ocean and, in the course of geological time, raised to form new lands and new pyramids. (Leopold, 1968: 216)

The non-living (in the biological sense) being, shape and form may alter, as over a human being-lifespan, the essence, the unit of being, Te Awa Tupua and Te Urewera exist, have existed and will continue to exist concurrently. The identity continues: there is no non-identity problem at least for periods of time beyond the imagination of human lifetime delimited scale. When I am the river or region and the river or region is me, I am its time and its is mine.

So there are two major questions left to address: What is time to these identities? And, how does that imagining of time affect theories of IJ and IEJ? IJ for this environment includes accounts for time past-present-future. A guardian for these identities must think as the identity, that is they must think in terms of all time. Half the guardianship of Te Awa Tupua rests with Māori, and two-thirds will be Māori for Te Urewera. Now, '[i]t has been said that Māori are a people who walk backwards into the future, a reference to the importance placed on seeking guidance for future actions from the wisdom of the past deeds of ancestors and

mythical heroes' (M. Roberts et al., 2004: 21). Maori have already a construct that is referential, my present connected to my past to inform my future. Here we have the foundations for an answer to my earlier questions: If, when contemplating IEJ, we embrace an ontology of embodied intergenerational coexistence, will that alter our perception of our obligations? Does the idea of being an ancestor living synchronically with future generations alter how we imagine IEJ?

If our face is looking backwards, time is not moving future-ward alone. As *kaitiaki*, as guardian for Te Urewera and Te Awa Tupua intergenerational environmental duties and obligations include recognition of the contribution ancestors continue to make to present-future. Part of that contribution was the care of, the active, conscious husbanding, guarding and nurturing by human ancestors of kin-that-is-not-human. As the voice for the voiceless geo-regions the expression of the econtology includes expanding obligations and duties into deep time. In so doing, coincident to this econtological turn, obligations to human kin might expand into the same realms of time. The care of one might well propel a care for the other.

These *kaitiaki* are responsible for providing the voice for the voiceless. They must *listen* to these identities. The rimu seedling in the forest has another 1000 years of life: how must *kaitiaki* represent it, while simultaneously representing the weta and the kiwi, the greywacke and the tumbling waters, the human and the cultural?

In theory, the guardians of Te Urewera and Te Awa Tupua may be obliged to make submissions on their behalf in national and international climate change debates and petroleum exploration proposals. Arguably debates and decisions made kilometres away will have long-term effects on the potential-to-continue-to-exist for both identities and the people who will live within and alongside them (these geo-region identities including within their singular identity human beings along with other zoological, biological and geological matter).[129] If the *kaitiaki* continue Māori practice of *kaitiakitanga* and fulfil their obligations to *improve* the state of these identities, then it would seem incumbent on *kaitiaki* to enter debates at far remove but integral to the welfare of them. Could they stand, on the regions' behalf, as candidates for parliament and become the voice for all life that will exist 100, 1000, 2000 years hence? Attend the COPs? Sue Ministers of the Crown, and pursue corporations

---

[129] Still more provocatively, perhaps these identities can take up causes on behalf of other geo-regions?

through the courts? These are, I suggest, the 'startling conclusions' hinted at in the opening. Te Awa Tupua and Te Urewera are past-present-future, their time is not mired, like Parfit's, in iterative moments of present unable to connect decisively with past or future. Their expanded horizons facilitate representation on behalf of all future generations of all being. Boundaries explode omni-dimensionally into the infinity of past present future. The power of any debt to ancestors is multiplied exponentially.

Released from the hegemony of 'competitive historical progress' Te Awa Tupua and Te Urewera have the potential to represent all time in political fora. Their being draws our attention to 'the present' not a singularity as the article 'the' suggests, but instead as a multiplicity of coincident events. 'The present' then seen as simply a rhetorical device constraining human attention to singular aspects of this multiplicity. If that is so, IEJ is released from the identity problem and embraces beings with futures calculated in centuries. As McKay says above, time and space can be multiple things at a single moment.

Chapter 8: Animal Vegetable Mineral — something more than human

> How unfathomable is the task of taking account not only of mattering but of its inseparability from the void, including the infinite abundance that inhabits and surrounds all being? (Barad, 2012; 216)

There is (at least) one more domain to explore for a theory of IEJ to meet the ontological needs of Aboriginal and Māori peoples. In this chapter, the artificial separation of animal, vegetable, and mineral is rejected. The divisions of previous chapters have been contrived. Each focused on a singular feature—liberal capitalism/materialism, individualism, anthropocentrism, time—of an entangled multiplicity of being. Here I draw again on Māori ontology to provide a foundation for IEJ that can meet Māori conceptions of IEJ within Māori worldviews. If HR and/or CA offer a potential foundation for decolonising IEJ, then the theory must be capable of drawing nonhuman into the community of justice bearing entities. If it cannot, its scope will exclude those people who understand their being entangled in relationships with earth systems as a whole. Krushil Watene has noted, however, as currently formulated CA, at least, is incapable of incorporating Māori relationships to nature (Watene, 2016). Using the concepts of *mauri, tapu* and *mana*, this chapter seeks to address multiple imbalances—in justice, human-nonhuman relations, cultural prerogatives, and between generations.

Early I used Simon Caney's formulation of rights-bearing interests. Specifically, I established a formulation '*country* has interests which are sufficiently weighty to impose obligations on others', based in Aboriginal philosophy. I then suggested that grants some form of rights to *country,* all it contains, and all the entangled relationships the concept *country* incorporates including human relationships with nonhuman and nonhuman relationships with human. Further, I suggested that as a foundation, this formulation of nonhuman weighty interests may be useful as a theoretical underpinning for the rights for nature discourse and legislation. It may also provide a theoretical framework from which to understand the underlying ontologies motivating the personhood status of geo-regions, land and water forms.

Switzerland, Ecuador, Bolivia, Aotearoa, and India have used the devices of dignity (Switzerland), rights (Bolivia and Ecuador) and personhood (Aotearoa and India) to make nature or elements of nature subjects of legal justice. While that itself does not require that

theories of political or philosophic justice adapt to the legal moves, the suggestion here is that rights and personhood for nature reflect existing philosophies and adapt them to Western legal structures. Furthermore, if standard, academic, Western justice theory is unable to accommodate such philosophies it *ipso facto* excludes some peoples. It is not universal. Both HR and CA are understood to offer universal standards of justice. This chapter attempts to suggest a way forward.

One way to establish nonhuman weighty interests, a way implied, this chapter will argue, by these legal initiatives, is to consider that nonhuman has type-specific dignity. The Swiss Constitution has done this specifically:

> Article 120 Non-human gene technology
> 1 Human beings and their environment shall be protected against the misuse of gene technology.
> 2 The Confederation shall legislate on the use of reproductive and genetic material from animals, plants and other organisms. In doing so, it shall take account of the dignity of living beings as well as the safety of human beings, animals and the environment, and shall protect the genetic diversity of animal and plant species. (Confederation, 1999)

Despite directing that the dignity of living beings is considered during experiments, the Swiss Constitution, like many theorists of justice and rights who depend on a conception of dignity as their normative foundation, has left dignity undefined (Nussbaum, 2007; 2011; Rosen, 2012; Schachter, 1983; Schroeder, 2010; Waldron, 2012). Moreover, as this chapter will explore, no modern Western conceptualisation of dignity is capable of providing a foundation for nonhuman within a theory of justice.[130] Conceptualising dignity from Māori ontology, recognising a potentiality for being and energy in all matter, it is possible to establish a formulation of dignity which does account for Māori and Aboriginal obligations and duties to nonhuman.[131] Conceptualised here as an immersive functioning dignity, it is also capable of underpinning legal rights, personhood and justice for nature.

The UDHR, justice theorist Martha Nussbaum, and others base claims of rights and justice in the concept of human dignity—as has been the practice since Aristotle. The claim is duties and obligations of justice must support the dignity of the individual dignity holder (Habermas, 2010; Kateb, 2011; Nussbaum, 2007; 2011; Rosen, 2012; Schachter, 1983; Schroeder, 2010; Waldron, 2012). This claim is fairly uncontroversial. Indeed, so uncontroversial the

---

[130] On a practical level, the lack of clarity around dignity's conceptualisation has caused disagreements among scientists working within the confines of the Swiss Constitution (Willemsen, 2008).
[131] In doing so it is important to remember that the sharp distinction human-nonhuman does not exist within these ontologies. Entanglement was the focus of Chapters 5 and 6 particularly, yet because it is so foundational it is woven throughout every chapter.

UDHR doesn't define human dignity. It presents dignity as universal and intuitively understood.

Nussbaum and Schachter each separately argue it is insufficient to base justice on intuition (Nussbaum, 2011: 29; Schachter, 1983: 849). In conceptualising dignity for the purposes of grounding the CA, Nussbaum extends its range to include individual nonhuman living beings (Nussbaum, 2004; 2007; 2011). By acknowledging their dignity, she includes particularly individual sentient animals as subjects of justice. Building on Nussbaum's conceptualisation, Katy Fulfer expands dignity further, locating it in ecosystems (Fulfer, 2013).[132] David Schlosberg suggests CA can protect environmental integrity (Schlosberg, 2012b; 2014). Although extended well beyond the merely human, by limiting the sites of dignity these conceptualisations are incapable of providing the normative support required by the expansive dimensions of the recent legal recognitions: they cannot fully support dignity within the inanimate realm, which seems to be the rational end of such laws. Nor do they support Māori understandings of nature (Watene, 2016).

Meanwhile, new legal recognitions of natural ecosystems have stretched the possibilities for justice beyond any boundaries placed by anthropocentric theory. They attach duties and obligations of rights and justice to all living things and the inanimate realm—to all matter. It might be argued that there is no demand to expand theories of justice to meet these legal moves. However, it is necessary if the same theories are to decolonise—that is if they are to meet the specific ontological requirements of Indigenous Peoples. To not do so is either to place Māori, Aboriginal and other Indigenous Peoples outside of the scope of the theory, or, if the theory makes claims of universality, to continue to suppress and delegitimise their ontologies.

If dignity grounds rights and justice, what conceptualisation of dignity is required for it to embrace an ontology in which no sharp distinctions are drawn between human and nonhuman, ancestors, living and future generations? Drawing on key elements of Māori worldviews and ontology, here I identify how they locate normative obligations to nature. I re-parse dignity to incorporate all nonhuman (animal, vegetable, mineral), attend to the potential demands of the legal frameworks, and address 'intuitive' discomfort with ongoing

---

[132] Nussbaum could be labelled a biocentric individualist, and Fulfer an eco-centrist who locates dignity within a community (Bendik-Keymer, 2014).

destruction of the environment. I take account too, of mattering and the void, that which Barad suggests is unfathomable above.

First, I establish a working conceptualisation of human dignity and discuss how legislation is framing the need for a more expansive conceptualisation. This is followed by an examination of some proto-holistic conceptualisations of dignity drawn from Nussbaum and Fulfer. Next Māori worldviews and ontology are used to explore an expansive dignity from which to draw claims of justice. Finally, I examine the implications this has for decolonising IEJ.

Dignity in Convention, Constitution & Law

> Dignity is an intuitive notion that is by no means utterly clear. If it is used in isolation, as if it is completely self-evident, it can be used capriciously and inconsistently. Thus it would be mistaken to use it as if it were an intuitively self-evident and solid foundation for a theory that would then be built upon it (Nussbaum, 2011: 29).

> [Dignity's] intrinsic meaning has been left to intuitive understanding, conditioned in large measure by cultural factors. When it has been invoked in concrete situations, it has been generally assumed that a violation of human dignity can be recognized even if the abstract term cannot be defined. "I know it when I see it even if I cannot tell you what it is." In some situations an abstract definition is not needed; but it is not entirely satisfying to accept the idea that human dignity cannot be defined or analyzed in general terms. Without a reasonably clear general idea of its meaning, we cannot easily reject a specious use of the concept, nor can we without understanding its meaning draw specific implications for relevant conduct (Schachter, 1983: 849).

Switzerland protects the 'dignity of living beings' in its constitution. Ecuador and Bolivia have granted legal 'rights' to nature. And Aotearoa and India have given geographic regions and features legal identities. Citizens of those nations are asked to treat the nonhuman realm with levels of respect akin to those demanded by human rights and human and corporate personhood. The concept of dignity is frequently used to ground justice theory based on rights of the person (Kateb, 2011; Nussbaum, 2004; 2007; 2011; Rosen, 2012; Waldron, 2012). However, existing scholarly conceptualisations of dignity, and there are many, are unable to meet the demand for rights and personhood for nature.[133] The argument here is

---

[133] For those interested in exploring dignity further see:
Michael Rosen for an expansive exploration of the history and philosophy of dignity in the West (Rosen, 2012).
Doris Schroeder examines dignity from the perspective of its use in bioethics, and finds as her title suggests five different conceptualisations and she is 'still counting' (Schroeder, 2010).
Jeremy Waldron's interest is in dignity as a legal concept, and his Tanner Lectures on the subject establishes what is quite likely the 'intuitive' meaning many people hold (Waldron, 2012).
Additionally, George Kateb makes a case for dignity as a human-only quality, arguing duties to nature flow from respect for human dignity (Kateb, 2011).

two-fold: that dignity must be re-conceived to provide adequate normative grounding for nature to have rights and identity; and that unless dignity is reconceived as an inclusively holistic concept HR and CA cannot accommodate Māori, Aboriginal and other ontologies. That there are many different ways of parsing dignity is both a strength and weakness—it demonstrates the flexibility of the concept and opens a space for regular review and adaptation, but also means that dignity, if not clearly defined, may be regarded as 'slippery' and inadequate for substantiating the demands of justice and law as Nussbaum and Schachter suggest above.

The UDHR arguably the most widely accepted global normative framework, opens with the statement, '[w]hereas recognition of the *inherent dignity* and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world' (Nations, 1948, italics added.). It fails, however, to identify how 'inherent dignity' is conceptualised. Perhaps this was a perspicacious move by the drafters if dignity has many conceptualisations. Not identifying with any particular concept facilitates diverse interpretations. However, decolonising justice requires more than intuition and assumptions, it requires clear specificity. I'll start by developing a 'working' conceptualisation of human dignity based in its modern usage.

The UDHR is clear about what dignity does, how it is performed (or Schachter's 'I know it when I see it' above) and how dignity can be supported.[134] It unequivocally states dignity inheres to all human qua human. Unlike many historical conceptualisations, it has no hierarchically based exclusions, there is no reference to God as a source, nor to human capacity to reason (Rosen, 2012; Schroeder, 2010). Jeremy Waldron suggests that modern legal interpretations are a form of 'levelled-up status dignity', that is all humans are bearers of equal status because they are sites of dignity (Waldron, 2012). Martha Nussbaum, too, views human dignity as a quality of humans qua human although she breaks with modern conventions and conceptualises it beyond the human realm as well (as I will cover in the next section) (Nussbaum, 2007; 2011).

For ease of understanding, I propose that a working conceptualisation of dignity, based in modern human status claims, might be parsed as:

---

[134] Thanks to Mirjam van der Heide, Australian Catholic University, for sharing her PhD thesis prior to submission, in which she includes an argument that dignity is a performative concept.

P1   Human beings are unique (and more important than all other living and non-living

         matter)

P2   Human beings strive to function and fulfil their specific potential

P3   All human beings are entitled to function and fulfil their potential qua

         human beings

P4   Dignity is found in freedom to access the resources to function and fulfil

         potential

C   Because it is theirs alone by birth right, all people are sites of dignity and all

         people have obligations and duties to uphold and respect the dignity of human

         beings.

While this conceptualisation works for humans, affording them rights as subjects and ends in the Kantian sense,[135] it excludes all other animate and inanimate things; they remain as it were, objects and means. However, rights and personhood for nonhuman could be said to have expanded the moral community beyond individual human alone, granting nature subjective rights.[136] And this is consistent with the worldviews of Aboriginal and Māori peoples. Based in an understanding of intrinsic value in the biophysical, each incorporates the concept of respect for and dignity in nonhuman forms, nature or Mother Earth. Each accords dignity to individual *and* collective elements of the environment, and each does it differently. Moreover, much like in the UDHR, the basis for respect and intrinsic subjective worth of nonhuman is left to intuition.

Ratified in 1999, the Swiss constitution refers to dignity as constitutive of human beings and other living things—animals, plants and other organisms, as quoted above. Each living thing is granted its own 'being-ness' that affords it respect. While some within the scientific community in Switzerland find the concept of dignity within the nonhuman realm

---

[135] Kant thought dignity was a value of human worth, an intrinsic status that separated humans (but not all humans) from and elevated them above all other. To be included in the moral community Kant argued, requires the power of reason:
'In the kingdom of ends everything has either a price or a dignity. What has a price can be replaced by something else as its equivalent; what on the other hand is raised above all price and therefore admits of no equivalent has a dignity.
What is related to general human inclinations and needs has a market price; that which, even without presupposing a need, conforms with a certain taste, that is, with a delight in the mere purposeless play of our mental powers has a fancy price; but that which something can be an end in itself has not merely a relative value, that is, a price, but an inner value, that is dignity.
Now, morality is the condition under which alone a rational being can be an end in itself, since only through this is it possible to be a lawgiving member in the kingdom of ends. Hence morality, and humanity insofar as it is capable of morality, is that which alone has dignity' (Kant 1988, 42 [4:434-435] in (Habermas, 2010; Rosen, 2012)).
[136] Approximately 40 years after Christopher Stone theorised this possibility in Should Trees Have Standing (Stone, 1972).

unacceptable (Willemsen, 2008), the Constitution, nevertheless, requires them to acknowledge the subjective rights and intrinsic respect-worthiness of all living things.

The Ecuadorian Constitution states:

> CHAPTER SEVEN
> Rights of nature
> Article 71. Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. (Ecuador, 2008)

And the Bolivian Law of the Rights of Mother Nature includes in Article 7 that:

> I. Mother Earth has the following rights:
> 1. To life
> 2. To the diversity of life
> 3. To water
> 4. To clean air
> 5. To equilibrium
> 6. To restoration
> 7. To pollution-free living. (Bolivia, 2012)

These South American examples draw on what Mihnea Tanasescu refers to as an 'Indigenous symbol' wherein Indigenous Peoples are represented as stewards of nature (Tanasescu, 2015), recognise the importance of interconnection and entanglement of human and nonhuman and specifically assign nature *rights.*[137] Neither refers directly to dignity. Both, however, harness the familiar language of UDHR—where the demands of dignity afford the bearer 'integral respect'. This is exactly the demand of Article 71 of the Ecuadorian Constitution: *Pacha Mama* has the 'right to *integral respect* for its existence' (italics added). Similarly, the Bolivian law does not specifically use the word dignity, however, it is couched in the language of rights, and states in Article 9, that '[t]he duties of natural persons and public or private legal entities [are to] 1. Uphold and respect the rights of Mother Earth'. By using the language of human rights, which is heavily dependent on dignity as motivator and justifier, these documents could be interpreted as suggesting nature also has dignity.

Furthermore, Nussbaum has claimed that dignity and respect are part of the same concept family, that is, understanding either term relies on understanding the other (Bendik-Keymer, 2014). They are, as it were, bound together in a tight dependency and union. Where dignity is debased respect is diminished, without respect there can be no dignity. So we could make

---

[137] I will return to address Tanasescu and the Indigenous symbol in the conclusion, however suffice it to say here I do not believe his criticisms of harnessing the Indigenous symbol apply in the case of the Whanganui River nor Te Urewera in Aotearoa, and if they do, the parsing of dignity I suggest here, may provide a means to overcome the pitfalls Tanasescu identifies.

the claim that in designating rights for nature—based in a call for integral respect—these South American nations are entreating citizens to uphold the dignity of nature. However, a conceptualisation of dignity that can embrace nonhuman in the comprehensive manner these documents require is not immediately available in HR and CA approaches to justice. That is neither the HR or CA is capable of responding to the 'Indigenous symbol'. They are unable to respond to these Indigenously inspired calls for rights and respect for nature in the Peoples' own terms. One way to resolve this is to reconceptualise dignity to reflect the respect for nonhuman these laws are demanding (Watene, 2016).

In Aotearoa, the tightly bound conceptual dependency between dignity and respect that Nussbaum and Bendik-Keymer discuss, is echoed in the Māori concepts of *tapu* and *mana*. The legal identities Te Urewera and Te Awa Tupua were introduced in the last chapter. Both the river and range are acknowledged as having full legal personality, and 'ownership' is vested in the geo-regions themselves (Aho, 2014). Both have become 'self-governing' subjects. No longer can they be treated as means and objects; like children and the mentally incompetent, each has guardians appointed to act in their intrinsic self-interest. Here Western corporate law and corporate personhood is blended with Māori philosophy. The geo-regions are to be respected as persons, integral stand-alone entities, a dignified whole, with standing in law, interest in their self-care and a 'voice' in decisions affecting them.

The Bills creating the identities are part of the Treaty of Waitangi Settlements negotiated by Ngāti Tuhoe and Whanganui *iwi*. They are part of the process to redress to some extent the wrongs of colonisation and colonial rule, land appropriations and subsequent Māori disadvantage. I suggest that for Te Awa Tupua and Te Urewera, not only have colonial wrongs to Māori people been addressed but so too is this an attempt to decolonise the country's relationships with the two regions/persons. The language of the Bills quite specifically directs people to interact with each as if they bear weighty interests, interests which might be said to stem from their dignity.

To decolonise IEJ, to ensure a theory of IEJ is sufficient to represent Māori (and other Indigenous Peoples) conceptions of nonhuman, dignity must be something other than the working conceptualisation above. It must be sufficiently nuanced to apply to nonhuman. This seems also the sort of argument that could be made if Aboriginal ontology is to be accounted for in theory. Where, for instance, Bawaka *country* is a co-author, *country* is instated as a co-being of equal stature with each other author. Jeremy Waldron and Michael Rosen

suggest, one of the roles of the idea of dignity is that we use it to bestow equal status (Rosen, 2012; Waldron, 2012). Dignity sets the level. Can dignity be conceived in a way that grants human and nonhuman have some sort of equal status?

Drawing from different cultural, epistemological and ontological positions (Western and Indigenous), dignity for nonhuman, rights for nature, and personhood status suggest animate and inanimate nature become the subject of intrinsic rights to respect, dignity, and integrity, to the freedom to flourish in their kind-specific way. The documents identify community, interaction, entanglement and co-dependence as inherent to these rights. Each calls on people to treat elements or all of the nonhuman realm as *subjects of justice.*

Here we circle back: if a call to justice is based in dignity, what conceptualisation of dignity can afford justice rights to the nonhuman? Certainly, my working conceptualisation of dignity, based on classic and widely supported human rights, cannot.

Proto-Holistic Dignity

Advocating for animal rights is not new. Activists, philosophers in the utilitarian school (Bentham, Mill, Singer (Nussbaum, 2007)), EJ and political theorists,[138] are all active in this space. In *Laudato Si* Pope Francis, too, suggests human obligations and duties extend to animals and the environment (Francis, 2015). These theorists, however, do not develop a comprehensive conceptualisation of dignity for nonhuman.

Within the body of political philosophy, Martha Nussbaum has 'begun' the work of expanding the scope of dignity, arguing it can be conceptualised to embrace animals (in particular those with sentience and intelligence).[139] Referencing Aristotelian dignity (a decidedly non-egalitarian form) as her foundation she builds a case to include particularly individual higher-order sentient animals, which live in close and intimate proximity to human community, within the scope of justice (Nussbaum, 2004; 2007; 2011).[140]

---

[138] See for instance Wissenburg, M., & Schlosberg, D. (Eds.). (2014). Political Animals and Animal Politics. Houndmills, UK: Palgrave Macmillan.
[139] Thomas Aquinas claimed animal vegetable and mineral bear dignity. His conceptualisation was instrumentally based. For him what was important was not demonstrating respect for 'nature' intrinsically, but that recognising dignity in 'nature' recognised God and respect for God's creation (Rosen, 2012; Schroeder, 2010).
[140] Aristotle grants dignity only to free, high-status males.

The CA is, Nussbaum argues, 'capable of recognizing a wide range of types of animal dignity, and of corresponding needs for flourishing and … the approach is capable of yielding norms of interspecies justice' (Nussbaum, 2007: 327). Human beings, she argues, are tied together by altruism and self-interest, and the good of others is integral to individual wellbeing (ibid.). Animals living integrally with a human community become part of the social good. The closeness of the relationships and interdependence between humans and these animals, and the animals' intelligence, sociability, ability to motivate action, etc., suggests the animals are entitled to something more than mere compassion. The integral entanglement of these animals with human lives means the animals should be included within the moral community. They should be bearers of individual species-specific dignity.

Nussbaum's formulation applies primarily to higher order sentient animals with whom humans form 'human-animal relations' (ibid.: 351). These animals are part of the complex of social cooperation, the purpose of which 'ought to be to live decently together in a world in which many species try to flourish' (ibid.: 351). Recognising dignity in animals places obligations on humans to facilitate their capacity to flourish in a species-specific way. As bearers of dignity individual animals become the subjects of justice, worthy of respect.

Nussbaum motivates readers to consider embracing this extended moral community by recognising the inseparability of human and some animals (Fulfer, 2013; Nussbaum, 2004; 2007; 2011; Schinkel, 2008). Her formulation demands active facilitation of the capabilities of these animals (and she provides a set of capabilities paralleling her list of human-centred capabilities) in a species-specific manner.[141] I call Nussbaum's conceptualisation Sentient Status Dignity and summarise it here.

---

[141] Nussbaum's list of animal capabilities,
1. Life
2. Bodily Health
3. Bodily Integrity
4. Senses, Imagination, & Thought
5. Emotions
6. Practical Reason
7. Affiliation
8. Other Species
9. Play
10. Control Over One's Environment
(Nussbaum, 2007; 392-401)

P1   Higher order sentient living animals ('intelligent creatures' including human beings) are unique

P2   Human flourishing is entwined with relationships with higher order sentient animals

P3   Human and nonhuman higher order sentient animals (in a manner similar to human beings) strive to function and fulfil their species-specific potential, and are capable of a dignified existence

P4   Dignity is found in freedom to access the resources to function and fulfil potential

C   Humans and higher order sentient living animals are sites of species-specific dignity and people have obligations and duties to uphold and respect their dignity.

This relational conception of dignity demands access to the capability to flourish for some sentient living things. While Nussbaum focuses on individual sentient animals, her idea of dignity here is capable of supporting an ontology in which human-nonhuman interconnection, with some limitations, is accepted as a flowing and entangled continuum of life.

When Katy Fulfer takes up the challenge, she expands the realm of dignity to encompass the community within an ecosystem including the lower order sentient and non-sentient living things in the community (Fulfer, 2013).[142] Fulfer points to the '(inter)connection' of human and non-sentient life (ibid.: 30) and enfolds the non-sentient into the boundaries of dignity and relational politics by suggesting abuse of non-sentient life is an act of disrespect to its dignity.

Drawing on Nussbaum's claims of dignity for higher order sentient life, Fulfer extrapolates:

> If interdependence in relationships with animals is important, then it is likely important in relationships with nonsentient life as well. Justice governs our relationships with other humans and animals because each has capabilities that need to be protected and promoted. Our strivings for flourishing overlap. The same is true of nonsentient life—our relationships with nonsentients indicate ways in which our striving for flourishing depends on their flourishing (ibid.: 30).

---

[142] Breena Holland also responds to the challenge by adding a 'meta capability'. She argues that protecting the flourishing of the environment is a capability which stands over and above all others (hence the 'meta'). No other capability may be realised she argues, unless the environment is healthy and flourishing (Holland, 2008b). In some senses this is self-evident, however, sadly perhaps it is a requirement that needs articulation. She recognises too the importance of (elements of) environment to some peoples' worldviews and social and cultural being. This meta-capability, can sustain the demands of both IJ and EJ, however, as Holland specifically claims the protection of the environment is an instrumental demand alone (319-323), it will not satisfy the demands of Indigenous justice for peoples for whom elements of the nonhuman world are warped within ontology and belief systems and for whom connections with nature are of intrinsic not instrumental value. Nor is it expansive enough to meet the demands of the constitutions and law discussed here.

Dignity in Nussbaum's and Fulfer's accounts cannot exist without access to the set of Nussbaum's ten capabilities, and the capabilities of living things are grounded in dignity. Capabilities 'make manifest the conception of dignity' (ibid: 30). Fulfer's 'focus [is] on our acceptance that justice and dignity emerge out of interactions with others, and that humans have a great deal of privilege relative to the nonsentient life we make use of and interact with' (ibid.: 31).

There is more here in Fulfer's account to indicate that CA may be an appropriate justice framework for IIEJ. She is incorporating nonhuman as an ecosystem, as a community. David Carruthers and David Schlosberg also suggest that the CA is capable of providing justice for communities—namely communities of Indigenous Peoples (Carruthers, 2010). EJ is as they note, 'embedded in community' (ibid.: 17). The point is where identity is understood to be communal (environment, people, culture, etc.), and where that communal identity is threatened by environmental harms then that 'it' can make claims for EJ. Furthermore, Carruthers and Schlosberg demonstrate that Indigenous communities have already a 'community-based, capabilities-centred conception of environmental justice' (ibid.: 30).

Separately, Schlosberg uses the term 'integrity' as a nonhuman extension of the concept of dignity to motivate ecosystem functioning as integral to framing climate change justice in the CA (Schlosberg, 2012b; 2014). In this way, he argues, we can extend justice to nonhuman as subjects, and more importantly here, it is a way for us to '*internalize* the environment' (2012b: 165. Italics original). The dignity of the individual element is dependent on the integrity (or dignity) of the whole in which all are immersed. Integrity he argues can be applied to ecosystems, to communities of being, in a manner individual-based dignity cannot.

These conceptualisations move much closer to that required by rights for nature and personhood for nature. They suggest human and other living things are interwoven and interconnected without creating (an artificial) division. There is, on Fulfer's and Schlosberg's accounts, dignity/integrity in nature-as-community generated by both interconnection and immersion, a dignity that is abused by disrespect and damage to any element of the whole.

Fulfer 'suggest[s] that the nature of our [human] dependence on elements within ecosystems bestows a kind of dignity on them. In other words, dignity is best understood in this context as a *relational moral property*. We recognise this dignity because the relations are ones of interdependence [between humans and between human and nonhuman]—our [human]

flourishing depends on that of nonsentient life and the flourishing of nonsentient life, in part, depends on our actions' (Fulfer, 2013: 31).

Rather than locate this dignity within individual living things and non-living things, the dignity in this formulation is situated in ecosystems in which human beings, other sentient and nonsentient life are embedded and of which they are constituents. These conceptualisations can be summarised as Relational Functioning Dignity.

P1	All humans, sentient and non-sentient life are interlinked in ecosystems
P2	Living things and ecosystems strive to function and fulfil their (species-specific) potential
P3	It is clear when a human, living thing or ecosystem is not functioning and/or cannot fulfil potential
P4	Dignity is found in freedom to access the necessary resources to function and fulfil potential
C	People have obligations and duties to uphold and respect the dignity of all living things and ecosystems

This relational conceptualisation of dignity affords living things the right to flourish. As a *relational* concept, it addresses Schlosberg's concern that for many 'the term "dignity" is primarily understood as an individual psychological state referring to one's own self respect' (Schlosberg, 2012a: 175). It is also capable of supporting a cultural ontology in which human-nonhuman interconnection is accepted as a flowing continuum of lives. Interconnections, however, do not finish with living organisms: all living things are also dependent on air, water and soil, minerals and nutrients.

Nussbaum and Fulfer indicate dignity can be embedded in animal and vegetable in a systemic way, and that at least some nonhuman living things should be considered subjects of justice. Fulfer expands the conception beyond the individual into ecosystems. And, while Fulfer's definition is possibly sufficient to justify the dignity claims of the Swiss Constitution, neither conceptualisation gives standing to the non-living in a way required by the legal developments of the other nations. The next section examines how dignity can be expanded to include the non-living and possibly a means to overcome the ongoing colonialization in HR and CA theory.

Māori Ontology

> The cosmic religious world view of Māori is as old as the culture itself and constitutes a philosophy, which is a love of wisdom and search for knowledge of things and their causes. … At the heart of [the Māori] view of the creation process is an understanding that humanity and all things of the natural world are always emerging, always unfolding.
>
> (Henare, 2001; 198)

> Ontological indeterminacy, a radical openness, an infinity of possibilities, is at the core of mattering. … Matter in its iterative materialization is a dynamic play of in/determinacy. Matter is never a settled matter. It is always already radically open. Closure cannot be secured when the conditions of im/possibilities and lived indeterminacies are integral, not supplementary, to what matter is.
>
> (Barad, 2012: 214-215)

In each case, Ecuador, Bolivia and Aotearoa have drawn on the epistemologies and ontologies of their Indigenous Peoples and blended them with Western legal structures.[143] Taking Indigenous frameworks, they harness the language of (Western) rights and incorporation to structure wide ranging protections for all nonhuman elements of the environment. In these frameworks and new legal structure, the nonhuman is a subject and bearer of rights. Working within Indigenous ontology, this could be seen as a 'logical' harnessing of their post-colonial governance structures. Working within a HR or CA approach to justice, it seems difficult to accommodate the breadth of entangled interrelationships with and respect for nonhuman expressed in these documents, and by Aboriginal people, unless the concept of dignity can be expanded. This section traces an alternative all-embracing conceptualisation of dignity.

Firstly, I acknowledge it is difficult to translate ontological concepts between epistemologies. Notwithstanding, the translation has occurred in Aotearoa law (as it has also with the translation of *Pachamama* into Ecuadorian and Bolivian legislatures). By granting *Te Awa Tupua*, and *Te Urewera* 'ownership' of themselves, the government has blended Māori epistemologies and ontologies and Western law. Māori ways of knowing and being in the

---

[143] It may be that India has too, however I know little of Indian Indigenous worldviews to make this claim. India may equally have simply chosen personhood as the best device to achieve environmental protection aims.

world recognise an integral, inseparably layered entanglement of everything, living and non-living across all time. They recognise, too, a vital, type-specific, subjectivity in all things. Everything has *hau, wairua, mauri, tapu and mana.*

Mauri is commonly interpreted as 'life force' (Durie, 2010; Henare, 2001; Mead, 2003). This is a highly epistemically evolved concept that requires more explication than such a simple translation offers. *Mauri* binds together the spiritual components of entities. The spiritual components of *hau, wairua, tapu* and *mana* are bound by *mauri* within the individual entity. Mauri is also the force that binds entities together, that links everything in entangled networks of spiritual and physical, living and non-living. *Hau* is the vital essence, the label for that which life itself, imbued at conception and lost at death. It belongs to and of a thing during its existence. *Wairua* (like *mauri*) functions to protect. Wairua guards against evil and harm, a force for good as it were, remaining with a body from conception to death when its eternal essence returns to join the ancestors in Hawaiiki. *Mauri* binds all the component spiritual parts of entities with each other and the *tinana* (body or form). Without *mauri* the other metaphysical powers have no residence in the thing or person. If the mauri is neglected or abused the essence, goodness, power and potential of the whole is abused and the integrity of the whole is lost—be that the integrity of a single entity or an ecosystem for instance (Int. MH). It is *mauri, tapu* and *mana* that are important in this discussion.

Māori scholar Mason Durie suggests we look at *mauri* within the following framework:
> [I]nanimate material objects possess their own form of life, a mauri, which both distinguishes them (from other objects) and also unites them within a wider network of entities.
> …
> The nature of mauri—the vitality—of [an inanimate object] depends not only on the structure and form but also on the relationship of [it] with the wider environment. In an Indigenous world objects that appear inanimate are not regarded as lifeless or static since they also possess an identity of their own and are part of a wider network. Belonging to that network creates a vibrant relationship that is at odds with the view that motionless objects lack life. … There are energy chains within, and dynamic relationships beyond. (Durie, 2010: 243)

In the second paragraph, Durie is referring to the pyramids in Egypt. He could equally have been reflecting on any natural process of endless connection, creation and recreation (D. Williams, 2001). Physics tells us the inanimate is not 'lifeless and static'. It is created and recreated by forces, by 'energy chains within, and dynamic relationships beyond'. The quotations above from Māori scholar Manuka Henare and Karen Barad, physicist and

philosopher of physics, echo the focus on constant change and dynamism of the Māori ontology. These are calls well beyond 'feel[ing] wonder [from] looking at a complex organism' (Nussbaum, 2007: 349). They each call for respect of unfolding and re-emerging. The defining unit is not the bounded individual. Rather the shape taken is one of boundless interaction and interconnection.

Spiritual and material are inseparable in Māori philosophy, that is all have *hau, wairua, mauri, tapu* and *mana* (Henare, 2001). Everything is metaphysically connected to the gods, and through *whakapapa* to ancestors and the living (M. Roberts et al., 2004; D. Williams, 2001).

Life force—*mauri*—gives essence to everything, animate and inanimate. It is through the principle of *mauri* that the 'energy chains within', entangled immersion and balance are recognised and obligations realised. *Mauri* has another powerful function: it holds together the key spiritual elements contained within any physical body (*tinana*), be that animal, vegetable or mineral. Intrinsic to all things are *hau* (the breath of life and a force for good), *wairua* (akin to soul), and the integrally bound *tapu* and *mana* (Henare, 2001; Shirres, 1982).

Tapu, intrinsic 'cosmic power' (Henare, 2001), the 'potentiality to be' (int. MH), 'being with potentiality for power' (Shirres, 1982: 29, 46, 50), is integral to all things and inviolable. Intrinsic *tapu* is inseparably entwined in a bound relationship with *mana* (Henare, 2001; Shirres, 1982). A quality of personal integrity commanding respect *mana* 'is humanity's greatest possession' (Henare, 2001: 208). Not only humanity's, but all things'. 'Once a thing 'is', then it has a real potentiality for power or mana' (Shirres, 1982: 46). Where *mana* is diminished so too is *tapu*, and where *tapu* is abused, *mana* is reduced. Where dignity is abused, the entity is debased. Just as Nussbaum co-joins respect and dignity, so are *mana* and *tapu* co-joined. In this way Māori have 'internalized the environment' in Schlosberg's words—no longer 'other' its integrity is protected (Schlosberg, 2012b; 2014).

Each thing is 'tapu in its own way' (Shirres, 1982: 46), thus each thing calls for respect in its own way. Each thing is linked through all creation to its ancestral spiritual power, the ultimate source of *tapu* and *mana* (Henare, 2001; M. Roberts et al., 2004; Shirres, 1982; D. Williams, 2001). 'So the tapu of a mountain means it must be a mountain and anything that gets in the way to stop a mountain being a mountain is attacking the mana of the mountain…' (Int. MH.). These 'things' may be distinguishable individual beings—a bird or tree say—or a

complex—such as a mountain or river or the sea—in which no separation between components of the whole is distinguished.

Everything has *tapu, mana, hau* and *wairua* bound together within *mauri*. These must be acknowledged in all things—that is, humans are not conceived, as they have been in the West, as having 'absolute dominion' (Ranganui Walker in D. Williams, 2001: 109) over the natural environment—'everything that has *mauri* must be respected' (109). Human dominance is tempered to ensure harmonious balance across the whole.

This is more than an 'Indigenous symbol' (Tanasescu, 2015), of harmonious reciprocity between nature and indigene. This justice describes the 'thing-power' or 'lively energy' Jane Bennett suggests is 'immanent in collectives that include humans, the beings best able to recount the experience of the force of things' (Bennett, 2004: 365). It recognises Schlosberg's argument, in expanding the CA to nonhuman, of 'integrity of a being' (Schlosberg, 2012a: 175), animate or inanimate. This worldview reflects, too, Freya Mathews' 'creative co-action' or 'synergy' 'conducive to a very immediate experience of intersubjectivity' (Mathews, 2008: 48). It more fully binds (human) animal vegetable mineral into an intimate interconnectedness and materiality than each of these does. In the modern context this is not so much a communicative claim (Vogel, 2006), but a recognition of co-creation, co-dependencies, and a demand for ongoing respect for human and nonhuman.

That human does not have dominion is not to suggest that human does not have a force within the environment—rather it *motivates* human to maintain harmony, ensuring human actions do not undermine the capabilities of nonhuman systems (Schlosberg, 2012b; 2014). Additionally, actions within or on nonhuman elements must augment the original as a mark of respect to intrinsic tapu (D. Williams, 2001). Put another way, humans have responsibilities and obligations to *add value*, *enhance* and *maintain balance* with the environment and elements within it, to maintain nonhuman *capabilities*. Recognising these concepts into law in Aotearoa has taken a route presaged by Christopher Stone in his seminal *Should Trees Have Standing?* (Stone, 1972).

Te Awa Tupua, and *Te Urewera*, as bearers of *tapu, mana* and *mauri*, have their dignity supported when their agency is recognised—when their whole, and individual but integral parts are not objects but subjects. This agency is now recognised in law in the two Acts. *Te Awa Tupua,* 'is an indivisible and living whole comprising the Whanganui River from the

mountains to the sea, incorporating its tributaries and all its physical and metaphysical elements' (New Zealand Government 2014a: 6). Clause 2.2 and 2.3 state: 'Te Awa Tupua is a legal person,' and 'Te Awa Tupua has the rights, powers, duties and liabilities of a legal person' (Government, 2014: 6). Furthermore, those 'rights, powers and duties' are to be executed by guardians, *Te Pou Tupua*, on behalf of Te Awa Tupua.

Similarly, in Clause 11 of the Te Urewera Act 2014, Te Urewera is declared to be legal entity. Specifically:

> (1) Te Urewera is a legal entity, and has all the rights, powers, duties, and liabilities of a legal person.
> (2) However,—
>   (a) the rights, powers, and duties of Te Urewera must be exercised and performed on behalf of, and in the name of, Te Urewera—
>   (i) by Te Urewera Board.
> (New Zealand Government, n.d.: Subpart 3)

The law of Aotearoa recognises the separate and distinct existence of these entities as subjects of rights. It has blended the concepts of *tapu, mana* and *mauri* with the company model of personhood, placing each region beyond the reach of human ownership. In doing so the gulf between human and nonhuman is closed: all entities have rights. Given dignity is widely accepted as the foundation of rights this suggests Te Awa Tupua, and Te Urewera are dignity-bearing, and by extension if not in law, all nature.

Recognition of intrinsic dignity in everything demands respect for the integrity and autonomy of other, to *actively* respect *mauri* within everything: respect for the integral physical and spiritual whole. Recognition of *mauri* calls for respect of *tapu* and *mana* in everything and acknowledgement of entangled immersion of human in environment. Conceptualising the existence of independent subjectivity within the elements of the ecosphere brings with it obligations and duties to *tapu* and *mana*.

Granting personhood to a river and forest range, giving them 'self-governance' and appointing guardians to act in the interest of each creates a mechanism to draw animate and inanimate into the moral community. Similar conceptualisations could have been explored through the constitutional and legal mechanisms employed by Ecuador and Bolivia granting rights to Mother Nature (Bolivia, 2012; Ecuador, 2008, see also Tanasescu, 2013; 2014).

In each case moral community is expanded and, I suggest, since dignity is the foundation of EJ and human obligations and duties, a reconfiguration of the definition of that very dignity is

required. The conceptualisation of this form of dignity could be labelled Immersive Functioning Dignity:

P1 All humans, sentient and non-sentient life (living things) and non-living elements on earth are interlinked

P2 Living things and non-living elements have form specific integrity and life force

P3 Living things and non-living elements have a form specific functioning and form specific capabilities/potential

P4 Non-living elements of the ecosystem contribute to the functioning of living things

P5 It is clear when living things and non-living elements are not functioning and/or cannot fulfil potential

P6 When non-living elements are not functioning, living things cannot function or flourish

P6 Dignity exists in freedom to access the necessary conditions to function and fulfil form specific potential

C People have obligations and duties to uphold and respect the form specific dignity of living things, ecosystems and non-living things

Here we have a conceptualisation of dignity that supports not only human dignity, but also expands the domain to encompass the *mauri, tapu and mana* in all, and immerses human in an interconnected and interdependent ecosphere. The independent agency and subjectivity of everything is acknowledged. It can form the foundation for expanding duties and obligations to the dynamic interrelationships between components of interdependence and entanglement.

When the gulf between human and other is closed, to award dignity to human alone is nonsensical.

Decolonising Dignity

> How truly sublime the notion that it is the inhuman—that which most commonly marks humanity's inhumanity as a lack of compassion—that may be the very condition of possibility of feeling the suffering of the other, of literally being in touch with the other, of feeling the exchange of e-motion in the binding obligations of entanglements. That is, perhaps what we must face in thinking responsibility and justice is the existence of the inhuman as threaded through and lived through us, as enabling us, and every being/becoming, to reach out to the insensible otherness that we might otherwise never touch. (Barad, 1998 219)

The CA recognises the value of culture to people's wellbeing (Nussbaum, 2000; Watene, 2016). Carruthers and Schlosberg identify that for Indigenous People there are community

capabilities that the CA can be expanded to facilitate. Fulfer, Nussbaum and Schlosberg have pushed the boundaries of the moral community, and the community to which we owe obligations and duties of justice beyond human alone, however, none expresses an understanding of nonhuman in a way that reflects Māori worldviews and culture. Moreover, they exclude also other Indigenous Peoples for whom nonhuman is bound in co-extensive relationships with human (Alfred, 2005; Bird Rose, 2012; Coulthard, 2014; M. Graham, 1999; Povinelli, 2016; Reyburn, 1988; Watson, 2015; Whyte, 2017). Taiaiake Alfred suggests an ontological interconnection between human and nonhuman is a common core of Indigenous philosophies, and 'Indigenous notions of justice arose within the context of beliefs in a universal relationship among all the elements that make up our universe' (Alfred, 1999: 42). Building beyond Carruthers and Schlosberg's expansion of the CA to communities, this chapter has taken one possible approach to responding to the existing rupture between theory and Māori worldviews. It has done this by taking the foundation concept of dignity from which Nussbaum developed her version of the CA and reworking it to reflect the concepts of *mauri, tapu* and *mana*.

The legitimacy of reconceptualising dignity is grounded by two factors. The first is that dignity has multiple conceptions within Western understandings—'at least five' (Schroeder, 2010). The second is the inability for dignity-based approaches to justice to account for Māori philosophy nor the philosophies of other Peoples. While the Rights for Nature/Mother Earth and personhood/identity status for nonhuman have been incorporated within the legal justice structures they remain outside Western justice theory. The argument is that flexibility can be brought to the CA if the already elastic concept of dignity is stretched beyond sentient beings and/or ecosystems. The parallel argument being that on the Māori understanding, not only is the ecosystem dignity bearing as Fulfer argues but so too are the constituent parts and the inanimate. Separately, Schlosberg sidestepped dignity as the basis for an inclusive form of CA, because dignity is understood as an 'individual psychological state' within the HR tradition, and it is hard to trace whether other beings experience a similar sense of their 'own self-respect' (Schlosberg, 2012b: 175). The obligations of justice on his account could be directed at upholding the 'integrity' of nonhuman. '[A] violation of the integrity of a being is', he suggests, 'a better marker for standing' (ibid.).

While only the work by Carruthers and Schlosberg was specifically designed to incorporate Indigenous worldviews, each of Nussbaum, Fulfer, Carruthers, and Schlosberg open pathways to decolonise the CA. The contribution here is to suggest that conceptualising

dignity from the Māori concepts of *mauri, tapu* and *mana* broadens dignity's boundaries to include animal, vegetable, and mineral. Moreover, it assigns intrinsic worth and demands respect for the environment as a whole, individual features (such mountains, rivers, or ranges) and their constituent parts. An expansive conceptualisation of dignity such as this can then effectively provide a normative foundation for the constitutions of Switzerland and Ecuador and laws of Bolivia and Aotearoa New Zealand and for CA as a variant of the HR approach to justice.

Nussbaum links dignity with respect in the same concept family, that is as she understands it the concepts are bound inseparably (Bendik-Keymer, 2014), and she applies the concepts to individuals of a species. The Māori concepts of *tapu* and *mana* are similarly a co-joined duality. *Tapu* like dignity twines with *mana* or respect: to disrespect is to abuse *tapu*. However, Nussbaum is, in Bendik-Keymer's phrasing, a biocentric individualist (ibid.: 176). This individualism is at odds with Māori ontology. Recognising a constant interplay of creation and recreation, in Māori life ways 'wonder' exists in the layers of interconnection, the overlap and interplay between all things on earth, not just in individuals of a species. For Māori individual wellbeing is dependent on community wellbeing, where community is all there is within the environment. Awareness of vulnerabilities to and dependences on interconnectivity are entwined within *kaitiakitanga*, the Māori philosophy of care, guardianship and IJ.

It is important to note that the Māori concepts of an integrative metaphysical and material whole, which call on human to act to support the dignity of other as a matter of justice do not suggest human endeavour and development must stop, ossify or regress. Rather, obligations and duties become grounded in respect for the dignity, the wholeness and wellbeing, of all things. Granting the nonhuman dignity pulls it firmly into the scope of justice shaping a body of obligations and duties to not only protect but also to uphold, support and enhance the flourishing and right to be integrally whole of all elements within the environment. Recognising the dignity in nonhuman establishes a common core of 'self-interest', and a means to understand the 'binding obligations of entanglements' Karen Barad refers to above. It engages IEJ's destructive challenges by addressing the entangled immersion of human and nonhuman, the co-dependencies, and intimate connections.

Dignity conceived this way does not rest in the individual living being. As already identified it can extend to a river or range and the individual elements within each. The elements of the ecosystems and the ecosystems themselves are united by *mauri*. In Mason Durie's words,

mauri 'both distinguishes them … and also unites them within a wider network of entities'. This unity of wider networks includes also ancestors and generates respect for their living continuation within genes, works, monuments, and the gift of healthy environments to the living. It encompasses the yet-to-be-born from respect for their place within the continuum of life, heritage, and endeavour, in their group identity as potentialities. It supports the demand of IEJ to ensure future generations receive an environment that will support their capabilities and dignity.

Expanding our understanding of how dignity can reside in nonhuman, locates human as one among many elements within the environment, rather than in a position of domination over it. It is possible it might capture the Aboriginal understanding of relationships between human and nonhuman where people are understood to be nature's 'intelligence, playing a vital role in the self-government of the interactions between species and environment' (Reyburn, 1988: 1), but not superior to nature.

If the bureaucrats at the Ministry of Energy in Aotearoa understood *mana moana* they may have expected intense resistance to the idea of seismic testing and oil drilling. For Apanui, *mana moana* includes recognition of the *mauri, tapu* and *mana* of the sea and currents, sea-creatures, the seabed, the seaweeds and the humans who have cared for them from respect for ancestors (human and spiritual), their own lives and those of future generations (Gage, 2012). *Kaitiakitanga* includes an obligation to uphold the dignity of the seas, of ancestors, of the living and future generations and of *whakapapa*—the connection of all things.

Had the Federal Government of Australia understood the dignity of *country* they might have expected the storage of radioactive waste within its depths would elicit intense resistance. On a tangential note, had Americans understood the dignity of the Missouri River and Lake Oahe, they might not have been surprised at the intensity of resistance at Standing Rock (Levin, 2017a; 2017b). For within these ontologies, '[I]n the kingdom of ends everything has […] a dignity. … [Everything] is raised above all price and therefore admits of no equivalent' to rephrase Kant (Kant 1988, 42 [4:434-435]).

Mauri, tapu and *mana* place an onus on people to think of the nonhuman as respect-worthy and to recognise the existential entanglement of all things. Justice for nonhuman grounded by these Māori concepts acknowledges the dual place of human and nonhuman on the

planet, and the needs of both. It calls for respect, enhancement and co-creation. It conjures a duty to *care for* and *improve* the environment for and of itself from and for all time.

Affording dignity to the nonhuman is a call to respect a 'right' to integrity, flourishing and support of form and function. It draws the nonhuman into the rights narrative and expands responsibilities within the political domain, requiring us, as Schlosberg says, 'to think about the autonomy and unfolding potential of the ethical issues of *interrupting* […] life process' (Schlosberg 2014: 81. Italics original.).

Section 3: Discussion

Chapter 9: Imagining entanglement

> Indigenous people are: 'Peoples who are regarded as Indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. (United Nations Development Group, 2009: 8)

> Decolonisation would decenter Western political theories and a global order, which is regulated by linear thinking, thinking that has produced a 'colonial matrix of power' that holds dispossession of those colonised by the state at its core. However, to dispossess, enslave, exploit and dispose of human beings is unlawful, and the state cannot continue to legitimise and make lawful its own crimes. (Watson, 2015: 149)

Over ninety countries have within their population's people who identify as Indigenous. The focus of this study has been primarily on two settler states—Australia and Aotearoa—however the principles at stake could be transported to the other settler states in which the cultures, philosophies, and welfare of the original inhabitants have been displaced by those of more recent, and more numerous migrant settlers. These are sites in which, despite post-colonial rhetoric, the decolonizing project seems to the dispossessed to have barely begun. Embedded within political structures, law and social practices are assumptions and processes that allow the settlers to maintain domination over the first peoples of those lands.

Here the ongoing and extended colonial project has been focussed through the lens of the political philosophy of IEJ. Western attempts to theorise and implement IEJ have been compared with Indigenous theorisation and practice in Australia and Aotearoa, and it has touched too on North America, Ecuador and Bolivia. These people—Australian Aboriginal, Aotearoa Māori, North and South American first nations—are remnant populations of peoples who were and continue to be subject to demands by invaders to become something else. Unique cultures, lifeways, philosophies, political structures and laws have been smothered by imported language, laws, regulations, social constructions and political domination. They are peoples who have been subject to indignities and horrific violence: genocide, enslavement, forced removals, stolen children, land theft, incarceration, and linguistic, spiritual and cultural suppression. This regime of violence continues, although it is now an insidiously subtle and covert violence, thinly disguised in a garb of political concern and patronage. Denied the dignity of traditional territories, languages, cultures and wider social acceptance within the dominant societies, many are forced to the physical and social margins (Watson, 2002; 2015;

Whyte, 2017). And yet, despite the odds, Indigenous identity and culture persist. Indeed there has been an Indigenous cultural resurgence in the settler states since the 1970's (Stewart-Harawira, 2005). However, despite this resurgence Indigenous Peoples continue to be othered, and the argument here has been that Western conceptions of justice, in particular, IEJ, are complicit in that othering project.

Entangled throughout this thesis lurks another indignity—the rejection by the mainstream of Indigenous philosophy. Indeed, as you may recall, so engrained is this rejection I originally placed the term philosophy, as applied to Indigenous Peoples' philosophy, in scare quotes. I have used the term philosophy to describe the living, iterative, and ongoing search by Indigenous Peoples to understand the natural and cultural world and their place in it, develop and codify ethics, establish systems of justice and governance, and to establish ways of living together free of domination and harms. Based on Indigenous ontologies, epistemologies, laws, and philosophy conceptualising and implementing IEJ is well resolved. IEJ is neither esoteric nor incalculably hard. And this is where I began. For anyone steeped in a land/*country*/environment ontology, to read through Western liberal philosophers' debates on IEJ is to be left with feelings of confusion and bewilderment. We know it's not hard. We have it sorted. It does not connate sacrifice in the sense of 'denial of self-interest' as John Meyer suggests is invoked by contemporary Western discourse (Meyer, 2015: 14). Nor is it generated by the reflexive self-interest that Richard Hiskes thinks may be sufficient to motivate IJ (Hiskes, 2005; 2009). It does not require a complicated algebra of rights—X has interests which are sufficiently weighty to impose obligations on others—per Raz and Caney (Caney, 2010a). Why?

Throughout the thesis, I have undertaken a quest to unwrap why IEJ is obvious and integral within my Māori heritage, to Australian Aboriginal peoples, and to other Indigenous Peoples, while the West largely resists its call. Through court cases, philosophy, story and scholarship the search has been for what are and where lie the disjunctures. Simultaneously, lessons for the West have been sought. Because by justice theories' own standards decolonisation must be necessary, the approach has been to radically and critically ask how Western justice theories and theorists are perpetuating the colonial project and injustice.

I have attempted to answer and resolve aspects of these questions. First, I outlined the philosophic boundaries of IJ, EJ and Indigenous justice as they are theorised within the Western academy. Then I employed three experiential location devices that identified key

ontological distinctions between Māori, Aboriginal and liberal philosophy. Each case identified how existing theories of IEJ are unable to accommodate underlying principles of Māori and Aboriginal life. In doing so my aim has been to demonstrate that Māori and Aboriginal philosophy is neither backward, backward-looking, nor fixed. Critical to this project are demonstrably lived and evolving life experience and lifeways. That is, I have dealt with modern culture, living cultures of the twenty-first century. This is not a revisionist project.

Finally, two key concepts that underpin IEJ—time and dignity—were examined—each offering avenues to broaden the conceptual foundations and practical application of IEJ. I have suggested that in their conceptualisation lie the foundations of philosophic difference between Māori and Aboriginal and the West, and also that by reconsidering their form they are a bridge to decolonising IEJ. When time is understood as synchronously past, present, and future IEJ is released from intergenerational competition. An act now is understood to also have consequences within the framework of duties to past and future. Where everything—animal, vegetable, and mineral—is dignity-bearing and respect-worthy, human acts are moderated beyond instant gratification.

Where and how liberal, and Māori and Aboriginal understandings of IEJ differ has been examined through some core conceptual underpinnings to theory and practice. Doing this, I have chosen to rend the entanglement of transcendental, human and nonhuman, past present and future intrinsic to Māori and Aboriginal ontologies. That has been difficult. Each intruded upon the others constantly, reflecting the entanglement as it exists in the world. While Western practice is to separate, to reduce to parts, to partition each into discrete domains, it is this very practice that creates dilemmas in IJ and EJ, and in policy and practice. Justice in the West has endeavoured to solve questions of interpersonal and state limits by focussing on human interactions. Māori and Aboriginal philosophies frame the same questions to include nonhuman within just practices.

More importantly, the thesis has unpacked aspects of the entrenched ongoing oppression of first peoples within justice theory. Although presented as universal justice frameworks, and frequently theorised by scholars living within the settler states, Indigenous Peoples' ongoing duties and obligations within their own living and lively philosophical, Law and governance structures are overlooked. Effectively justice theories support, knowingly or not, the displacement of Indigenous Law and governance to the settler regimes' power and dominance. That is, they perpetuate the long colonial practice of ignoring, dismissing, or

denying Indigenous wellbeing, autonomy and authority. My challenge has been to see if IEJ can decolonise, to uncover avenues that, while maintaining core features of theory, are flexible enough to embrace holistic ontological perspectives. I suggest that IEJ either embraces the entanglements of human and nonhuman, coloniser and Indigene, past present and future or, if it does not, the theory cannot maintain a claim to universalism.

After reviewing the key findings from each section this concluding discussion will narrow in on three particular conceptual adjustments which may facilitate a revitalisation of IEJ through HR and CA. There is of course much left untouched by the thesis—so it concludes with a brief review of those shortcomings and potential avenues for further research.

Living at the intersection

Philosophic environment

> Tribal governments have enormous—historic—responsibilities to ensure members can safely practice their relationships with the environment (Creation). (Whyte, 2011: 199)

> As the descendants and reincarnations of these ancestral beings, Indigenous people derive their sense of belonging to country through and from them … Colonization did not destroy this ontological relationship to country. (Moreton-Robinson, 2015: 12)

Western justice theories respond to real needs. In different ways, they suggest how to organise society. They create devices to ensure each member of society is equally free from oppression and domination. Drawing on millennia of theory each refines and finesses the formulae of past ages, time, culture, and social standards. They respond to real and potential injustices in the world, placing boundaries around individual freedoms where they risk impinging on others' freedoms. And in this, they are to some extent a juggling exercise. That juggle is particularly evident in theorising IEJ.

Māori and Aboriginal Australians, along with other original inhabitants of what have become the settler states, also devised theories of cooperation and justice.[144] Drawing on millennia of experience and theorising, they expressed these theories in story, dance, song and lived example, through protocol, procedure and practice. Like Western theories, they take different forms. And like the theories of the West, they continue to evolve. For the living members of these societies and cultures, these philosophies resonate. They continue to shine a light.

---

[144] As have many other Peoples.

While they too involve a juggle, it is perhaps least evident in Indigenous theories of IEJ. And this was the provocation for this thesis. Why do Māori of Aotearoa and Aboriginal of Australia, Amerindians, Northern American First Peoples embrace IEJ while Western societies wriggle and squirm from obligations to the environment and future generations? The introduction has a table summarising some key philosophic differences (see page 20) and I'll come back to these shortly. For now, I want to address decolonisation.

For Indigenous Peoples within settler states maintaining and sustaining culture and values is threatened by post-colonial political and legal structures, environmental harms, climate change and alienation.[145] This is particularly, but not exclusively, the case where their numbers relegate them to minority status, and entrenched disadvantage moves them to the margins of social consciousness and peripheral geographic locations. My argument throughout this thesis is that protecting and enabling Indigenous and ambicultural values and acts is a matter of justice. Or conversely, I argue where Indigenous Peoples autonomy is suppressed injustice occurs (Carruthers, 2010; Schlosberg, 2004; Whyte, 2011; Young, 2011).[146] I have specifically addressed Indigenous Peoples of the settler states, where people wish to maintain and pass to their heirs, philosophies, customs and practices.[147] This is a matter of IEJ where that culture, philosophy etc., is bound with nonhuman and in a territorial environment. The suggestion is, Indigenous Peoples ability to 'walk' equally freely in two worlds, the dominant culture and their Indigenous culture, where they choose to do so, may be impaired by the structures of state. This is particularly the case where the state sanctions, and/or fails to stop acts that permanently change or degrade the environment, or encourages and facilitates its alienation. The freedom to choose to be Indigenous, to protect and preserve nonhuman kin now and for future generations is then stifled.

Additionally, Indigenous culture, and the obligations and duties members of Indigenous nations bear are not recognised and acknowledged as seriously as those of the dominant society. The claim is that injustice persists in settler states in circumstances where

---

[145] This does not exhaust the list of disadvantage. The list is limited to those areas of focus in this thesis.

[146] It should go without saying that I am referring to autonomous acts which themselves do not contravene the rights or capabilities of others in an unethical manner. Acts which caused injury or death for instance fall outside the boundaries of acceptable autonomous acts.

[147] Here I mean Indigenous Peoples' ongoing, living, evolving but distinctly identifiable epistemologies and ontologies. Ones that have continued to exists and evolve within the bodies of knowledge and actions of the peoples. I am not talking here of the cultures of yore, but rather those that have evolve and developed since colonisation—much as the dominant culture has continued to evolve—and however, have remained identifiably distinct from those of the imported, and now dominant, culture.

Indigenous citizens are unable to fulfil their traditional duties and obligations to the environment and heirs. Moreover, I suggest, all Indigenous justice is IJ, and all Indigenous justice is EJ: the environment, past-present-future, being Indigenous and justice are inseparably entangled. Within the settler states, all Indigenous justice issues have at their heart IEJ. Indigenous agency is as truncated by the post-colonial project as it was by active colonialism. Indigenous agency is truncated, too, by Western theories of IEJ.

The claim that the colonial project continues arises where the state chooses to prioritise dominant structures and preferences within the traditional territories of the Indigenous Peoples. Despite the alienation of the territories from their control and official custodianship, Indigenous Peoples' identity and obligations are based in the ongoing responsibility they retain for their traditional territories, derived from kinship and entwined relationships between the people and the animals, plants, birds, waters, fish, landforms (Durie, 1998; Moreton-Robinson, 2015; Watson, 2015; Whyte, 2016). The introductory quotations suggest while territories have been removed from traditional 'ownership' and many acres are now under the fee simple title system of the settler states, these lands, waterways, seas, and associated lifeforms remain in the minds of their Indigenous kin within the purview of traditional owners' responsibilities. This is their custom. This is their law. From a Māori or Aboriginal standpoint, traditional responsibilities of custodianship do not cease with alienation. Traditional owners still hold and maintain intergenerational and environmental obligations to *country* whether the state recognises it or not (Durie, 1998; Moreton-Robinson, 2015; Ruckstuhl et al., 2014; Watson, 2015; Whyte, 2014; Yunupingu, 1997). However, the state has the power, as we saw with Apanui, to emasculate traditional owners' capacity to uphold culturally important practices—practices from which identity is moulded.[148]

For Indigenous Peoples, inclusion in a Western-style political and legal structure was, and for some remains, involuntary: that is the Indigenous Peoples are denied the agency to choose the philosophic and political structures in which they operate and from which their obligations and duties derive. The epistemology and ontology on which the Western laws and politics are based have been foist upon Indigenous Peoples. Furthermore, these Peoples are compelled to adhere to laws through various measures of force and violence (Stewart-Harawira, 2005; Watson, 2015).

---

[148] This entanglement of identity, custom, nonhuman and territory is an essential part of the settler state Indigenous Peoples being. See for instance (Alfred, 1999; 2005; Coulthard, 2014; Durie, 1998; 2010; M. Graham, 2008; Randall, 2003; 2007; Reyburn, 1988; M. Roberts et al., 2004; Watson, 2015; Walia, 2015; Whyte, 2014).

It is important to note this discussion is not about the West or liberalism per se. That Indigenous ontology is not concordant with liberal orthodoxies and vice versa is, despite the many words about to be dedicated to that discord, in many ways irrelevant. Importance, significance, and relevance rest in structures and institutions capable of acknowledging and supporting Indigenous Peoples autonomy and recognition. Pertinence arises where current Indigenous ontological orthodoxies, the scaffolds of Indigenous IEJ, are repressed and over-ruled within the settler states. In the vein of Iris Marion Young the claim is that, to include the Indigenous Peoples of the settler states upon whom their theories impact, Western IEJ need to be 'imaginatively taking their positions' (Young 1997: 341).[149] As matters of IIEJ there are two domains with which the West must grapple: liberal philosophical orthodoxy needs re-examining to identify potential blocks to IEJ generated by those orthodoxies, and adapt to address them; and secondly, and more importantly here, liberal orthodoxy must re-examine itself to identify ways in which it oppresses people within its parameters of influence.

The objective is not to include Indigenous Peoples within liberal philosophy and politics. Rather this thesis contrasts the liberal against the Indigenous and argues two things. First, for Indigenous Peoples to fulfil their culturally specific obligations and duties of IEJ, Western political philosophy must develop a deeper, respectful understanding of those duties and obligations and ensure they avoid further marginalising Indigenous Peoples. The project is about recognising Indigenous Peoples' agency. Second, I am suggesting that by carefully reflecting on Indigenous ontologies, seemingly intractable liberal conundrums may dissolve, albeit that some individual freedoms may be curtailed. For instance, understanding human existence as entangled with nonhuman existence is one avenue towards maintaining a healthy, vibrant, regenerative environment. Including past and future generations within our communities facilitates a sense of continuity that focuses attention on gifts from the past and responsibilities to the future. That is, reflection in selected Indigenous lifeways becomes a site of knowledge production that challenges and enables changes to liberal orthodoxies (Moreton-Robinson, 2015).

---

[149] The thesis does not contain a comprehensive coverage of Young's theory of Recognition Justice. The difficulties the theory holds in the Indigenous arena are thoroughly critiqued by Glenn Coulthard (Coulthard, 2014). Kyle Powys Whyte also identifies significant hurdles encountered when applying recognition justice when evaluating environmental justice for Indigenous Peoples (Whyte, 2011a).

Political environments

> … the specific ways in which tribal sovereignty is defined and represented in relation to non-tribal institutions may leave the tribes open to injustice.
> (Whyte, 2011a: 199-200)

> [Indigenous peoples'/Aboriginal] ontological relationship to land, the ways that country is constitutive of us, and therefore the inalienable nature of our relation to land, marks a radical, indeed incommensurable, difference between us and the non-Indigenous. This ontological relation to land constitutes a subject position that we do not share, that cannot be shared, with the postcolonial subject, whose sense of belonging in this place is tied to migrancy.
> (Moreton-Robinson, 2015: 11)

Daily, Indigenous Peoples watch the degradation of lands, waterways and seas sabotaging their heirs' autonomy (Selby et al., 2010; Whyte, 2017). While many Māori self-describe as ambicultural, the structures and law of Aotearoa are not. Australian Aboriginal clans have Native Title over their lands, which oftentimes empower them with little more than entry rights to the territory to perform ceremonies and protect sacred sites (as long as those sites will not impede mineral exploration and exploitation).[150] At Standing Rock in South Dakota, the agency to fulfil obligations to protect water has been given and removed by the strokes of two Presidential pens. Within these settler states Indigenous agency is circumscribed by provisos: firstly, agency exists within prescribed parameters—to conform to the dominant/dominating norms of the state—and secondly, where Indigenous norms and dominant norms conflict the state prevails. Protection of the environment for future generations is then alienated from Indigenous hands and left with the state.

When Indigenous practice, philosophy, ontology, epistemology, law, language, and/or lifeways conflict with the settler model, it is the settler model that is favoured by institutions of state, as we saw with Apanui in Chapter 4. Settler property ownership laws, settler boundaries, settler individualisation, settler time, settler anthropocentrism, settler ontology underpin the liberal settler state norm and define the parameters of acceptability and legality. Indigenous Peoples are left in a bind. They have obligations and duties under both systems. But where the Indigenous system resolves problems intractable to liberal philosophy and politics, they are hamstrung. Liberal political philosophy's foundations are seemingly unshakable.

---

[150] See for instance the Yindjibarndi Native Title - http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/NNTR%20Extracts/WCD2005_001/NNTRExtract_WCD2005_001.pdf, accessed 28 march 2017.
While the Te Urewera Bill granted personhood status to a geo-region, it secures mining rights for the Crown (New Zealand Government, n.d.).

Two separate confrontations between the State and Māori and Aboriginal people were examined in Chapter 4 (Aotearoa) and Chapter 6 (Australia). They are not the only ones. Nor are they unique or new. They simply provide context and grounding for the more esoteric discussion that has preceded and will proceed in this section. They are included here to illustrate the lived experience of Indigenous People in settler states with the neo-colonial experience. Each also exemplifies the clash of underlying ontological values that has and will continue to generate irruptions in Māori and Aboriginal agency, autonomy, human rights, and capability fulfilment until settler states create respectful spaces for Indigenous epistemology and ontology. I could equally have chosen examples from the Tar Sands territories of Canada or from Standing Rock in the USA. These are not problems unique to one or two groups of people in Aotearoa and Australia alone.

Apanui, the *iwi* who's *rohe* covers the north-eastern margins, ranges, waterways and sea of the East Cape region of Aotearoa, were given one month by the Department of Energy to respond to a complex off-shore oil and gas exploration project consultation. Their elected officials and lawyer were deep in preparing a submission to a related Bill—revisions to the Foreshore and Seabed Act (FSA). Apanui immediately made two requests: first, that the government appoint one 'agent' with whom they could negotiate on *iwi* related issues, and second, their submission to the offshore mining proposal be delayed until the FSA was complete. These can be seen as practically driven requests, the *iwi* has limited resources. They are also politically driven requests—Māori protocols are consensus-based. One meeting with the government would be insufficient to gain a consensus. The government's agents ignored both requests, the mining permit was granted, a foreign company engaged, and the survey vessels entered the waters of Apanui traditional seas. Apanui responded with a flotilla blockade that was eventually broken by the country's navy.

Apanui then took the Minister for Energy to the High Court, accusing the Minister of failing to follow due process (Gendall, 2012). The trial considered the Minister and Ministry's extensive evidence of process. It considered Apanui's single affidavit. It found in favour of the Minister, as did a subsequent appeal. The court heard but could not apprehend the law of Apanui. The process the Minister followed was that of the dominant Anglo-based law and legislative regime. The process Apanui described articulated traditional responsibilities. The duties to ancestors, duties to nonhuman kin, duties to the seas, foreshore and land, duties to pass to heirs an improved environment. These are political and ethical responsibilities. They are *kaitiakitanga*. They contain Apanui's philosophy of entanglement, their theory of IEJ. Their

208

affidavit spoke of responsibilities to the sea creatures, responsibilities based in an ontology that emplaces gods, ancestors, the living, future generations, fish, fowl, beast, plant, waterway and landform in an ever past-present-future-past spiral of interconnection (*whakapapa*). It described all time and the gifts of giving inside an entanglement with the intrinsic properties of all things through all time.

The Milwayi, Ngapa, Wirntiku and Ngarrka clans of Warumungu people of North West Australia fought a long battle to have their traditional lands, *country*, returned under Native Title, to be confronted almost immediately, by a Federal Government decision to locate the nation's proposed nuclear waste dump there. Traditionally, decision making is a collective and iterative process for Aboriginal: a decision is based on consensus (Int. DR). In this case, the Government and the Northern Land Council (NLC) chose to negotiate with just one family of the clan, and one legally designated Traditional Owner. She negotiated the terms, her family and the NLC received the financial benefits.

The community rallied. They rallied to protect *country*. *Country* for which their ancestors have been custodians for at least 2000 generations. *Country* for which their parents and grandparents had fought to (re)gain title to. *Country* from which comes the law. *Country* with which they are each entangled. *Country* that must be protected for itself and heirs—human and nonhuman. The Traditional Owners took the same action as Apanui. They went to the High Court. On the eve of the hearing the Minister withdrew and announced the government would enter into a twelve-month search for a new site.

While a victory for Warunungu, this was a pyrrhic victory for Aboriginal people. The new site, in South Australia, is situated on land held in fee simple title. It is on a rural landholding. The owner will receive financial compensation for the land and the local community funds for community development. Invisible to the state and the landowner are the Aboriginal people, the Adnyamathanha Traditional Owners who have a 50,000[+]-year line of direct descent from the original settlers to country (Tobler et al., 2017). Over these years generations have learned from, share kinship ties with, emplaced their ancestors and future generations, and fulfilled custodial obligations to this place. 2000 generations have sung, danced, and listened to this county. That the state structures deem it to now be owned by another in no way diminished these ties, kinship connections, duties and responsibilities. But state structures simultaneously negate the authenticity of these connections, duties and responsibilities, and the agency of Aboriginal people to fulfil them.

More recent is the matter of the Dakota Access Pipeline' route under the Missouri River in North Dakota. The path of the pipeline crosses the Missouri only because it has been diverted 'from a predominantly white suburb to a predominantly Native reservation' (Geiling, 2017). The response of the Standing Rock Lakota was the rallying cry 'mní wičhóni', water is life. Like many translations, this fails to capture the ontology behind the meaning. In addition to sustaining life, water is sacred (LaPier, 2017). Lakota have spiritual, philosophical, law-based obligations and duties to maintain its purity. After a site protest, widely supported by a wide range of American people, President Obama signed a hold on construction. President Trump picked up a pen and reversed the process allowing construction to proceed. Court challenges, too, have failed (Geiling, 2017). During the process the protesters have been attacked by police (Levin, 2017a), the North Dakota government created new criminal penalties and strengthen existing protest penalties (Geiling, 2017), protesters were arrested and face lengthy prison terms (Levin, 2017b).

These cases highlight a shadow of Indigenous experience in settler states. They are selected to demonstrate that despite the settler states' ongoing attempts to eliminate the cultures of the original nations of invaded lands, these cultures are alive and IEJ is for them a priority. They reveal the ongoing strength of culture and responsibilities to territories that pre-date the colonial invasion. Importantly, they show these cultures are not historical relics. They live in the present. The multi-materiality of Indigenous being is not new or post-subsistence, it existed and continues to exist in states of both subsistence and plenty, moneyed and non-moneyed economies. These, like all cultures, continue to grow, develop and evolve. However, the DAPL protest and fight, like Apanui's, Warumungu's and Adnyamathanha's are symbols of ongoing systemic oppression, borne of a complete incomprehension of and lack of curiosity about Indigenous ontology. Archetypical epistemological ignorance it renders these Peoples' philosophy, belief systems, Law and custom unknowable. In each case, the state offered minimal (if any) consultation and no effective avenues for negotiated outcomes on Indigenous terms. In each case, state actions are deemed legal within the dominant structures. While they transgress the Laws of the traditional owners they simultaneously render invisible the Indigenous Peoples' ontology and protocols of IEJ. Unless the cloak of invisibility is raised, even with just procedure, the parameters within which Indigenous Peoples can operate in the settler states limits their capacity to fulfil the obligations of IEJ.

In summary, drawn from these cases common themes arise. In the minds of the Peoples concerned, their obligations and duties to IEJ have not been extinguished by colonisation. Land, waterways, seas, plants and animals are entwined with being and spirituality. Individual strength is rooted in community strength. Territory, integral to community and cultural identity, is sacred and respect-worthy. Human being is no more important than other being. All creation has dignity. Ancestors and future generations are alive in the present.

While many of the ontological values in Figure 1.1 (page 20) have been well addressed by theorists, it has not been specifically for Indigenous Peoples but rather as part of general ontological differences within the body of liberal thought. Moreover, as Krushil Watene notes, 'politically liberal theories look to be unable to speak to the challenge of future generations in full' (Watene, 2013: 35). Additionally, integration of nonhuman into the canon is seldom addressed, and the conception of time remains resolutely mechanical. The next section attempts to draw the elements of Figure 1.1 together. The review of the liberal canon is by necessity brief. The 'new' insights will come from the parameters Aboriginal and Māori philosophies describe. Strongly evoked throughout Indigenous People's rights discourse, and specifically in the discourse of the key protagonists in the case-studies above, are a communitarianism which integrates and entangles nonhuman within the collective, attribution of subjectivity to environment/nature, and a sense of intergenerational justice that spans past present and future generations. Together they hold the key to cultural continuity and autonomy.

Where the environment is substantially degraded, kin-species become extinct, traditional foods, medicines and craft-material sources lost, landscapes, seascapes, waters and sacred sites reshaped and/or destroyed the content and context of culture is eroded. In such situations then, people are unable to continue culturally significant practices, nor pass to future generations the knowledge and lifeways gifted to the living by ancestors. Nor are they able to honour cultural and moral responsibilities to those same ancestors. The choice to be Indigenous or ambicultural is then denied to future generations. The cultures of the settler states will be homogenised.[151]

---

[151] This homogeneity has been the objective of the colonial project from the outset, however, where it is not voluntary it can be understood to be an affront to the dignity of the people so denied and a limitation to their agency and autonomy, each of which is as discussed throughout this thesis foundational to modern liberal justice theories.

Inseparability: Ontological foundations

> [The] representation of postcolonial Australia offers the symbolic appropriation of the sacred as a way that white Australia can seek to achieve the unattainable imperative of becoming Indigenous in order to erase its unbelonging. A sentiment of belonging is enhanced through white possession of the "Indigenous sacred" as well as Indigenous lands. (Moreton-Robinson, 2015: 10)

> Old Aboriginal people have often stated that White Australians 'have no Dreaming', that is, they have no collective spiritual identity, together with no true understanding of having a correct or 'proper' relationship with land/reality.
> (M. Graham, 2008: 188)

The environment is never far from the surface in any aspect of Māori or Aboriginal philosophy. Nature merges with and emerges in culture and culture merges with and emerges in nature. Likewise, nonhuman weaves through each of the ontological ruptures identified in Figure 1.1. As each is separated in this section, so each is inseparable to the other within Māori and Aboriginal otology. The entanglement reverberates through each subsection marking the irrationality of the attempted disentanglement.

The project is pursued because, for instance, while Avner de Shalit's CTIJ turns its back on individualism, it is unable to account for Māori conceptions of time nor Aboriginal conceptions of nonhuman subjectivity (de-Shalit, 1995). So too, while the individualism of Derek Parfit is rejected by many, holism, place, omni-dimensional past-present-future and nonhuman dignity find not home in their theories nor Parfit's (Parfit, 1984). While Simon Caney's HR based approach sweeps future generations into the HR dialogue he pays no head to ancestors (Caney, 2008). Edward Page's IJ viewed through the lens of reciprocity can include communitarians and acknowledges obligations born(e) of inheritances from ancestors, however, it too instrumentalises nonhuman (Page, 2007b). They are all, resolutely anthropocentric. Martha Nussbaum's CA (Nussbaum, 2007; 2011), while extending subjectivity to some nonhuman sentient beings as part of human communities, is still individualistic, unable to accommodate an entangled human and nonhuman worldview, and offers an insubstantial account of IJ (Watene, 2013).

This section teases out aspects of ontology that are actually fibres of the same twine. It does so not to appropriate the 'Indigenous sacred', but rather to underscore the ongoing role liberally-based justice theory has on unravelling the foundations of Indigenous Peoples'—past present future—wellbeing, the role liberal justice theories continue to oppress their epistemologies and ontologies (Dotson, 2014).

Holism

> Because the ancestral spirits gave birth to humans, they share a common life force, which emphasizes the unity of humans with the earth rather than their separation. The ontological relationship occurs through the inter substantiation of ancestral beings, humans, and land; it is a form of embodiment. … Colonization did not destroy this ontological relationship with country. As the descendants and reincarnations of these ancestral beings, Indigenous people derive their sense of belonging to country through and from them. … Colonization did not destroy this ontological relationship to country. (Moreton-Robinson, 2015: 12)

Holistic ontologies, or econtologies, do not privilege humans. They share a recognition of interconnectivity between living and non-living things. Human and nonhuman are understood to be part of the same continuous whole, each element dependent on and responsible (within the bounds of its capability) to the other. The focus is on ensuring harmony within the totality of earth systems.

'Other' is not owned, dominated, tamed or turned solely to human advantage. Other is to be respected, husbanded and supported as an integral whole and to ensure the wellbeing of human as one element of a total wellbeing (Bird Rose, 2012; Durie, 1998; Gage, 2012; Henare, 2001; Muecke, 2004; Randall, 2007; M. Roberts et al., 2004; Stewart-Harawira, 2005; Watene & Yap, 2015; Watson, 2015). Within this understanding of people and environment obligations of justice extend to all living and non-living matter without an extensive privileging of human (M. Graham, 2008). The *Apanui* affidavit states:

> The kapu (key philosophical message) conveyed by our ancients here is that we are part of an inter connected and interrelated whole, and like that whole, stand possessed of qualities sourced in Atua (spiritual powers). In terms of our relationships with the environment, they are governed by a tikanga (laws) of deep respect and spiritual bond. (Gage, §18, 3)

There is awe in, and understanding of interrelationships between all elements. In these situations, maintaining balance is paramount.

Importantly cultural identity and structure are deeply entwined in and with nonhuman as Henare and Moreton-Robinson identify of Māori and Aboriginal ontologies above. Animals, plants and landscape elements are interwoven with aspects of human behaviour and being. The wellbeing of human and cultural continuity are tied to the wellbeing and continuity of nonhuman. Everything has a dignity and integrity to be honoured and nurtured. There is flow between the elements.

This notion of dignity arises again later as it is critical to these ontologies, and may provide an avenue as Krushil Watene suggests, for the CA to describe justice within the Māori context (Watene, 2016).

To decolonise IEJ requires us to dismantle the Western binary human-nature, civilised-wild, tamed-hostile and accommodate a worldview in which nonhuman has an inseparable relationship with human and which endures despite colonisation.

Place-focus

> When our old people spoke of being the boss or owner for country, their meaning of being in ownership encompassed a relationship of love for ruwe, a relationship, which is ancient and continued forever; it cannot be traded or sold in exchange for beads or money. There can be no lawful agreement to sell the ruwe or its songs, for they are the law.
> (Watson, 2015: 153)

> 'Environment' has meaning not only in economic sustainability terms, where resources provide, for instance, the basic food and clothing necessities, but also in political and cultural/spiritual terms as well.
> (Kawharu, 2010: 222)

The 'placing' of Aboriginal clans, arises in their clan-stories from the beginning of time. For Māori, since landfall and disembarkation from named canoes. Māori expressions of attachment and inseparable connectivity with their *rohe* and all within its boundaries find voice in variants of Whanganui iwi's expression of belonging: *E rere kau mai te Awanui, Mai i te Kahui Maunga ki Tangaroa, Ko au te Awa, ko te Awa ko au.* The Great River flows, From the Mountains to the Sea, I am the River, and the River is me. A foundation for IEJ, the good of nonhuman and human within home-territories is so commingled they are inseparable. This inseparability then demands equal respect for the whole. As Watson says, place cannot be sold. Place, is a source of identity, for the individual and the *hapu, iwi* or clan: being is entangled with one's home place, it is something more than resource as Kawharu reminds us above.

Both Māori and Aboriginal discourse focusses on place rather than land as property to own, trade or convert to profit. Landform, waterways, lakes, and seas are places with which the cultures create relationships—including spiritual relationships—around which story, myth and legend revolve, and from which Law is made (Bird Rose, 2000; Kawharu, 2010; Watson, 2015). Culture and individual identity are closely associated with place (Bird Rose, 2012; Burarranga et al., 2012; M. Graham, 2008; Turia, 2012; Watson, 2002). For Māori, *marae*,

the building and meeting space central to hapu and iwi identity, is, argues Merata Kawharu, a metaphor, or symbol for the whole environment with which they are linked physically, economically and spiritually. 'The environment may be considered as an extension of all that marae symbolises, and vice versa, marae are an extension of the wider environment' (Kawharu, 2010; 227-228). Physical environment, past present and future, the spiritual realm, human and nonhuman, ancestors and living are symbolically collapsed into hapu/iwi identity. Aileen Morton-Robinson argues, 'Indigenous ontological relations to the land are incommensurate with those developed through capitalism, and they continue to unsettle white Australia's sense of belonging, which is inextricably tied to white possession and power configured through the logic of capital and profound individual attachment' (Moreton-Robinson, 2015: xxi).

Variously ancestors, gods, animals and spirits arise from the landforms, waterways, lakes, and seas that form the places of these cultures. All contribute to philosophy, social norms and behavioural practices. Rules of human and nonhuman engagement arise from the repeated patterns and interactions of all elements of landscape and environment. In upsetting the balance, the rules are broken. 'Modern' land management, extractive industries, mining and land re-formation, and toxic waste deposits all transgress place-based rules enshrined within codes of conduct, laws, cosmologies, stories, songs, artworks and daily practices of Indigenous guardians.

Relationships, obligations, duties and ways of interaction guide harmonious coexistence between all things through all time. In this context, the form that IJ takes is very different to a property and contract-based IJ in which loss of landscape by one generation may be offset by the transference of financial assets to future generations. These ontologies of entwined interconnection generate intergenerational obligations to maintain wellbeing in the nonhuman as inseparable to the wellbeing and identity of future generations. No-human is a subject not object: it cannot be owned or possessed.

Decolonised IEJ, therefore, turns away from fungible property towards a custodial ethic.

Communitarianism

> Aboriginal people have a kinship system which extends into land; this system was and still is organised into clans. One's first loyalty is to one's own clan group. .... We believe that a person finds their individuality within the group. To behave as if you are a discrete entity or a conscious isolate is to limit yourself to being an observer in an observed world.

(M. Graham, 1999: 182)

E tangata is about a person who is also a people. It's I-we stuff.
…
I call it a kinship view of the world.
Apirana Ngata and other *rangitira* of the 1840's would often say *'Koe o Ngāti Porou', 'Koe o Ngāti Whatua'*. 'I am Ngāti Porou', 'I am Ngāti Whatua'.
So the I and the we comes together. It means that when you slip into that mode of speaking, I am no longer speaking as myself, I am speaking as Ngāti Porou or I am speaking as Māori.
I'm not talking to you as one person to another person.
So we slip in and out of these things.
…
…the word *tangata* in its singular form refers to the person, but it can also refer to the group. We are a people.
(Int. MH.)

Linked closely to holism and attachment to place, are Indigenous People's communitarian lifeways. Where a sense of self is constituted from a timeless continuum of being and relating to multiple others, including nonhuman others, actions are directed at securing good for that wider time-transcending community.

For Australian Aboriginal 'family' and 'community' can have wide-sweeping meaning. Bob Randall of the *Yankunytjatjara* people describes it this way.

Everything living is family. The trees are our family. The same with the kangaroos, emus and all the other animals that live with us. Growing up with the oldies, our parents, the grandparents, they always said we are connected to everything else and the proof of that is being alive. Being alive connects you to every other living things that's around you. You're spirit, you're psychic, you're physical, you're mental, you're all connected with other living forms. You're never lost and you're never alone. You're one with everything else that is there. The oneness, the completeness of the oneness.' (Lee, 2006)

This connectivity is the ontological core of *kanyini.* As Randall describes himself it is clear if we are to know the man we must equally understand the boundary between man, kin, time and place is a zone of fluid interchange, blending one into the other in an exchange of love and giving, care and guardianship.

Similarly, Māori concept *of whakapapa* describes the human descent relationships, from Gods to first explorer canoes, to immediate ancestors, with spirit and non-human animal and plant kin (Durie, 2010; Mead, 2003; M. Roberts et al., 2004). Obligations and duties move between realms, time, spaces and form. The cultures are dominated by webs of multiple interconnections, where the sense of self is enfolded in relationships with kin, animal, plant, land and skies, ancestors and future generations.

So while the individual is the unitary being, a being is strengthened and empowered by and in relationship to a broad and expansive web of other. Ego has little place in this self-understanding. 'The reflective and questing Aboriginal mind,' says Graham, 'is always

216

aligned with what everyone in the group wants, and what everyone wants is to understand ourselves in order to have and maintain harmonious relationships' (M. Graham, 2008: 184). And those relationships expand back and forward through time, through human and nonhuman, terrestrial and celestial, physical and spiritual.

IEJ is, therefore, communitarian and within the community are enfolded ancestors and non-human. IEJ acknowledges benefits accrued in the present from the past and the integrity of the community is understood to be necessary to support the dignity of the individual.

Time

> Kaldowinyeri, or time long ago, in the beginning, is also the time now, and time in the future. The beginning, the present and the future encircle the place of Kaldowinyeri. The Nunga 'I am' is not like the other, dominant Western subject of being, which is represented by a straight line of thought — beginning, middle and ending. Instead, a Nunga process encircles; within there is a process that allows a person to become one and to begin again. This process is non-hierarchical and no-linear; rather, it takes the form of a cycle, of the continuity of being, becoming another cycle, nurntikki.
> (Watson, 2015: 16)

In both Māori and Aboriginal ontology, past and future are in the present. Rather than relentlessly forward moving through a series of stops and new starts, being-in-time circles and spirals catching past and future in the moment in multiple tangles of beings and time (see Watson above). Stewart-Harawira describes it as 'impossible to conceive of the present and future as separate and distinct from the past, for the past is constitutive of the present, and, as such, is inherently reconstituted within the future' (Stewart-Harawira, 2005: 42).

In explanation, I wrote of my personal whakapapa. I am the descendant of the Polynesian Pacific explorers who settled Aotearoa and formed the iwi Ngāti Kahugnunu (and a whole potpourri of Anglo-Celtic folks). They are my ancestors, and I am a member of their future generation. I have a son and a daughter. In them live the same ancestors and me. And they are my future generation and the potential creators of even more future generations. And soon I and they will be ancestors to new generations.

Further, I described the intellectual entanglement that we have with non-kin ancestors. We each build, iteratively from those around us: family, teachers, mentors. From books and movies and TV. And here in this thesis I draw on, and make my own, the learning and thinking of multiple peoples from many cultures, across multiple generations and times. We are, I argued, an amalgam of acquired ontologies and knowledge. This knowledge is ancient, living in current thought and will vibrate through the lives of future generations.

The physical me, the physical you are even older. For in our bones, tissue and fibre are minerals drawn from the soils in which our fruit and vegetables have grown. Salt, iodine, assorted minerals are lodged in our being. These minerals and salts are as old as the earth itself. As young as each of us is, we are simultaneously as old as earth. And when we are

recycled at our time of death, they will return to the earth. Are they then new or still ancient? Are they separated or entangled?

We are told the microbes in our stomachs influence our thoughts. And we know these same microbes are not a static community. They come from outside of us—from our mothers during vaginal birth, from our foods and environment. Our skin is not ours alone. It is host to a teaming community of microbes. Our bodies are hosts to hosts of microbes. Without this intimate entanglement with microbes, we cannot fully function. Far from individual, each human is also multitudes of nonhuman (see Yong, 2016). These components of the living me have a different lifespan to the me I think of as me.

All these things occur in each instant of time, simultaneously. Thinking time as encompassing all that basket of ancestry and future potential—genetic, intellectual, mythological, biological, mineralogical, ontological, physical and experiential—is a means of explaining the Māori conception of time. I am in the Māori expression walking into the future with the past and present in front of me (Ranginui Walker in (McKay & Walmsley, 2003)). The moment 'now', is at once past, present and future: was, is and always will be. Time here is not linear but a constantly referential spiral which entangles at once the past, the present, and the future. The moment 'now', is at once past, present, future: was, is, and always will be.

Because this is how time is known IEJ does not feel like a sacrifice (Meyer, 2015). To be kaitiaki is to entangle ancestors, living, future generations and to become ancestor. There is no intergenerational competition, for all exist simultaneously. Within this entanglement, also, animal, vegetable and mineral become the subjects of justice for they are inseparable from creation, human, and the future.

Past-present-future-past must underscore a decolonised IEJ.

Subjectivity

> In 'knowing' their human selves to be fundamentally different from animals and the rest of the natural world, the Europeans ended up with their focus being centred on relationships between humans. This limited them; the focus resulted in a hegemony, a 'master' and 'slave' relationship with the natural world (and with others of their own kind).
> (Watson, 2015: 148)

> One of the key objectives of our current iwi management practices is the maintenance and protection of the mauri of the biodiversity in our tribal lands and seas. Tikanga associated with the tapu of the sea and the fish and food gathering areas are there to ensure that mauri of the areas are not nullified or desecrated due to improper activity and that the tapu also of this areas and species are cared for and with regards to tapu (as rules) are obeyed.
> (Gage, §32, 5)

Nonhuman subjectivity has woven its way throughout the last four subsections. Where

human and nonhuman are kin no hard distinction is drawn between the intrinsic being-ness of

either. Care for and reciprocity between each occurs without distinction. Genealogies connect both. Nonhuman communicates if human will listen carefully (Burarrwanga et al., 2012). In contrast to the Western master-slave relationship, described above by Irene Watson, there is no fundamental difference between 'things' in the Māori and Aboriginal worldview. That is, everything has subjectivity. Everything is a site of justice. Everything 'always emerging, always unfolding'.

In the Māori ontology, this is described through the embodiment of fundamental essences common to all things, but with species and sort specificity. Remember Mason Durie describe the power of *mauri* to both distinguish and unite objects, and to draw them into wider connected networks of being. It assists us understand the inanimate as a site of relationship and dynamism (Durie, 2010). Two other components are integral to subjectivity within this Māori worldview, *tapu and mana*—dignity and respect. As dignity and respect are conjoined within Western philosophy (Bendik-Keymer, 2014), so too are *tapu* and *mana* bound together.

Practically this means that all things have subjectivity. The human obligation is to uphold the *mauri, tapu* and *mana* of all nonhuman. A forest must be respected as a dignity bearing whole. The duties human bear are to ensure use of the forest does not damage or impair that dignity. 'Development' must be in sympathy with the intrinsic subjectivity—trees removed for specific (enhanced) purposes, damage limited.

Removing mountain-tops for coal, polluting rivers, poisoning lakes, deafening and disabling whales with seismic waves, covering seabirds in spilt oil, burying leaky barrels of radioactive waste, depleting biodiversity assault their *mauri, tapu* and *mana*. The human responsibility is to respect a landforms' life-force, dignity and respect-worthiness.

Obligations and duties to decolonised IEJ stem from subjectivity in the environment per se as well as to future generations of humans.

Blueprints: Generating Indigenous Agency – expanding liberal scope

> …despite having been devalued, marginalized, disenfranchised and frequently submerged throughout the history of Western imperialism, traditional Indigenous

> knowledge forms have a profound contribution to make towards an alternative ontology for a just global order.
> (Stewart-Harawira, 2005: 32)

> We have an obligation and a mandate to care for and nurture all things for the benefit of future generations still coming. We have an obligation to pass on country to the future. We cannot enter agreements that would destroy life and ruwe. Proposals to develop nuclear waste dumps, or to construct mines that will pollute the natural world, are artefacts of muldarbi deals'.
> (Watson, 2015: 161)

> Recognition justice requires that policies and programs must meet the standard of fairly considering and representing the cultures, values, and situations of the affected parties.
> (Whyte, 2011: 200)

Makere Stewart-Harawira and Irene Watson, above, identify an imminent moment. A moment in which recognition paves new relations of respect between peoples and the environment, past, present, future. However, as Whyte suggests, theories of IEJ can only be respectful of and just for Indigenous Peoples if they represent 'the cultures and values and situations' of those same Peoples.

This thesis has suggested five ontological understandings are required to decolonize IEJ theory for this imminent moment; holism, communitarianism, place-focus, past-in-present-in-future, and nonhuman subjectivity. It has been impossible to separate human from nonhuman in the five domains of the previous section. Every aspect of the philosophies of Māori and Aboriginal links human and nonhuman subjectivities. The suggestion is if justice theory is to make universalist claims it needs to integrate at least these five values to decolonise.

While a number of existing theories may accommodate one or two of these values, none currently accommodates them all. Most critically, and most problematically any understanding of IEJ within these philosophies must include nonhuman as subject. I suggest this as the most difficult and the most crucial for what I hope are by now obvious reasons. Māori and Aboriginal Peoples, along with many other Indigenous Peoples, understand themselves as kin to, and in guardianship roles for, the nonhuman realm. This worldview is incompatible with philosophies in which nonhuman is 'resource', those that are constituted in opposition to nonhuman and where it is reduced to terms of domination over, control of, usefulness to humans and dollar values.

It is within the HR and CA to justice that developments have unfolded which may signal they could provide a structure for decolonised IEJ.[152]

Drawing from the innovations in Aotearoa, Bolivia and Ecuador where nonhuman protections have been mandated using legal mechanisms of legal personhood and rights, offers insights into how decolonisation may be possible for the CA. Briefly outlined below these moves integrate the Indigenous ontologies of each nation within legal structures imported from the West.

Personhood: past present future

The Te Awa Tupua (Whanganui River Claims Settlement) Bill 2017

> …declares that Te Awa Tupua is "an indivisible and living whole" and comprises the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements and is a legal person with all the rights, powers, duties and liabilities of a legal person.
> (New Zealand Government, n.d.)

Similarly, Te Urewera-Tuhoe Bill, 2013, states; 'Te Urewera will effectively own itself, in perpetuity'. However, as a mute member of society, 'Te Urewera can only act through human agents' who 'will be obliged to serve Te Urewera and act in its interests, with a unity of purpose and the utmost good faith, rather than acting on behalf of the appointers' (Te Urewera–Tūhoe Bill 2013; Part 1).

These geo-regions and their multiplicity of animate and inanimate beings, human, animal, plant and landform, are recognised as one being, a community of placed inter-related interests and dependencies. Challenging though this identity is to some (Arif, 2015), the Te Urewera-Tūhoe and Te Awa Tupua Bills confront the Western framing of time and the animate-inanimate divide.

The ontological foundation is steeped in notions of twined care and belonging, neither *iwi* nor nonhuman is complete without the other, a connection without beginning or end, within which Māori, as *kaitiaki*, work for the benefit of all. This legislation embraces the ontology of Te Urewera and Te Awa Tupua where time is already always past present future. The time of folded sandstone ranges and volcanic mountain slopes, of birds, insects and human kin, droplets of rain merging in river flows in which tumble grains of sand and ash on their way to

---

[152] Martha Nussbaum identifies CA as part of the Human Rights family of justice theories (Nussbaum, 2007).

coastal deposit to be pressed with other grains into new sandstone layers before they are lifted and folded…in perpetuity.

The guardians appointed to be the human representatives of the two regions are required to think like the nonhuman person they represent. The time they must represent includes elements that predate the formation of earth through to the transitory lifespan of a drop of rain merging with the flow of a river. Significantly, this is achieved through a Western legal structure.

Rights for nature: dignity

The various Rights for Mother Nature/Earth mechanisms draw heavily on Indigenous ontologies from South America. Responsibilities and obligations extend to maintaining respect and reciprocal interconnection and dependence between human and nonhuman. In the Constitution of Ecuador and the Rights of Nature Act in Bolivia, all citizens are charged with obligations to respect the wellbeing of nonhuman within the structure of rights. In so doing they harness the language and the intellectual structures of rights, respect and dignity as a normative grounding.

Rights protect human dignity. Human dignity within the Western canon, however, has been used to separate human from nonhuman. It is also conceptualised in many ways—maybe five, maybe more (Schroeder, 2008; 2010). Nussbaum suggests, '[d]ignity is an intuitive notion that is by no means utterly clear' (Nussbaum, 2011). It is a flexible concept.

Although Nussbaum includes sentient animals within the CA, Krushil Watene suggests the CA in its current form is 'is unable to include Māori values as they apply to nature' (Watene, 2016). However, she also suggests that 'the spiritual dimensions of the concepts of "mauri", "mana" and "tapu" could be captured by a modified version of innate dignity' (ibid.: 294). As discussed earlier *mauri*—life force, *tapu*—potentiality for being, and *mana*—respect-worthiness, inhere in all things. They are species specific qualities of subjectivity. Taking these three concepts as the foundation, the concept of dignity can be expanded to represent subjectivity in all things.

Within Māori ontology, the interlinked entanglement of human, sentient and nonsentient life and nonliving elements on earth is bound in *whakapapa*. Literally, to lay down in layers,

222

whakapapa is the epistemological structure in which connections between all forms and through all time are articulated. From this, we know living and nonliving elements all have form specific integrity and life force—*mauri, tapu* and *mana*. We know too, that these same elements have potential for form-specific functioning and form specific capabilities and potential. Specifically, this worldview acknowledges that nonliving elements of the ecosystem contribute to the functioning of nonliving things and vice versa—the entanglement is an essential element of each. It is clear when living things and nonliving elements are not functioning and/or cannot fulfil capabilities or potential or, phrased differently, when nonliving elements are not functioning, living things cannot function.

Now, it is the next move that brings this framework to meet the CA. If we can agree, which I think we can, that dignity exists in freedom to access the necessary conditions to function and fulfil form specific capabilities/potential then for living and nonliving things there are optimal conditions for their form specific dignity. This dignity, I proposed in Chapter 8, is derived from the life force, potential to be and respect worthiness that inheres in all things. All things have within them their own energies and identity-giving forces—their life forces. Each has potential to be, in temporary or all-time form—so while a grain of sand may tumble in the waves today, it may become a constituent of sedimentary rocks in the far future—whatever it has within it that potentiality. It is that potential to be, to be in form specificity, in relation to all other forms, from which *mana* is drawn. It has then its own dignity. And people have obligations and duties to uphold and respect that form specific dignity in living things, ecosystems and non-living things.

My argument is, building on Nussbaum's claim that nonhuman animals, particularly those with humans have close relationships, are bearers of dignity (Nussbaum, 2007), that dignity, derived from inherent being and the complex of entanglements that ensure flourishing, inheres in all natural things. Bearers of dignity are bearers of rights and capabilities within the HR and CA framings of justice. Dignity confers subjectivity. It assigns responsibilities to respect the freedom and interests of the subject.

Rights, Simon Caney suggested, indicate that 'X has interests which are sufficiently weighty to impose obligations on others' (Caney 2008; 538). Dignity is a weighty interest. Weighty enough to underscore the Universal Declaration of Human Rights. By including Mother Earth within constitution and rights law, Ecuador and Bolivia suggest human and nonhuman have a

weighty interest in wellbeing and flourishing to protect their inherent dignity. This weighty interest is sufficient to place obligations on the living to protect nonhuman on its own terms.

What this thesis proposes is that to decolonise IEJ, 'X' must include *country* (to use the Aboriginal English term for entangled nonhuman). And I suggest the weighty interests of *country* are supported by its intrinsic dignity as derived from life force, potentiality to be, and respect worthiness. *Country* has rights. Since these rights exist *prior* to acts (Bell, 2011), human beings have obligations and duties to protect existing and future nonhuman to ensure the ongoing functioning, wellbeing and flourishing of that-which-is and that-which-is-not human. Future human and nonhuman have a weighty interest in functioning, wellbeing and flourishing to protect their 'inherent dignity'. This weighty interest is sufficient to place obligations on the living to ensure that dignity is protected.

Formed this way, a decolonised IJ protects interconnected communities of human-nonhuman-place and entanglements of ancestors-living-future generations-ancestor. Or inversely, there can be no justice without functioning interconnected communities of entangled multi-generational human-nonhuman-place, to paraphrase Schlosberg (2014: 78). Where there are such functioning communities, the obstacles of materialism, individualism, anthropocentrism and presentism fade.

Directions Ahead

> Law is lived, sung, danced, painted, eaten and in the walking of ruwe. Law inheres in all things and is alive in all things, but these days it is an ongoing struggle to keep many things alive in the face of the attempts to bury our law ways as part of the colonial project. (Watson, 2015; 12)

> The realisation of "human rights" necessitate a surrounding environment which is intact. (L. Graham & Friederichs, 2012)

The key argument of this thesis has been that Western theories of IEJ as they are currently formulated continue to marginalise Indigenous Peoples. They maintain the colonial project, and its practices, prejudices and conceits. And they do this despite the well-meaning and compassion of the theorists. Cultural ignorance and blindness sit at its heart. An ignorance that is born as Charles Mills defined of epistemic ignorance—the iterative, violent, repression of knowledge within society and the academy of not only the lived experiences of non-white Peoples within settler states but of their rich cultures, knowledge, ontologies, politics and law.

The practice in the iterative process of politics and political philosophy references Anglo-European sources. Of course, this is appropriate if the body politic is Anglo-European. However, in the settler states, it is not. Settler states contain Indigenous Peoples who are thrice insulted by this practice. First through ongoing marginalisation. Second, because the theories of IEJ are antithetical to Indigenous practice. And lastly, because Indigenous justice incorporates intergenerational and environmental practices free from the resistance, obstacles and incomprehension of the West. Conceived from entanglement and mutuality between human and nonhuman, maintaining balance and harmony is both pragmatic and transcendental. Importantly, that Indigenous people might have something to offer the iterative intellectual project is at best overlooked, at worst rejected.

The argument throughout was and remains, that the existing theories are not wrong per se. Rather, that within the confines of Western ontology they become strained at the point at which they meet the demands of IEJ and non-Western conceptions of the nature of being. The assumptions of material consumption, individualism and individual rights, anthropocentrism and mechanical time constrain the parameters in which theorist may operate. Thus there are real difficulties in theorising just outcomes for Anglo-European heirs.

But more stridently the argument is there is no justice within these frameworks for Māori or Aboriginal peoples. Nor for other Indigenous Peoples within settler states. In making a claim to universalism theory perpetuates injustice. It continues to bury Indigenous Peoples 'as part of the colonial project' to which Watson refers above. There is something illiberal about a theory that masks the ontologies and conceptions of the good life of peoples within its remit.

Martha Nussbaum suggested at the 2017 HDCA Conference that anthropocentrism is a 'most extraordinary arrogance'.[153] I suggest that to propose any IEJ theory is universal while it ignores, diminishes or trivialises Indigenous philosophies is also a most egregious arrogance. One of the advantages of the CA is its flexibility. Nussbaum for instance notes that her list of capabilities 'is open-ended and has undergone modification over time; no doubt it will undergo further modification in the light of criticism' (Nussbaum, 2007; 76). My suggestions here have been that, first, by engaging with philosophies outside the Western canon, philosophers working within the CA may find concepts which can be used to assist resolve

---

[153] Nussbaum made this observation in response to a question during the Roundtable: Other Species Capabilities, Theory and Practice, HDCA Conference, Cape Town, South Africa, 2017.

the theoretical challenges of IEJ for Western subjects. That is the CA provides a frame from which to work in partnership with indigenous scholars to broaden the philosophical traditions from which it draws. Second, it is important that theorists are explicit that the CA provides a framework for justice within Western epistemological and ontological traditions; that is it cannot be seen as a universally valid framework. Furthermore, I am suggesting that, given the ontological divide between Māori and Aboriginal philosophies and the CA, and acknowledging there are multiple Indigenous philosophies, it is unrealistic to expect the CA to adapt to meet the needs of all.

Final thoughts

There are numerous areas into which this thesis has not ventured, where further research is necessary.

This is a deliberately Southern work, and Antipodean at that and so large bodies of excellent scholarship from the northern settler states of Canada and USA have been elided. So too detailed consideration of the philosophies and practices of those much older, southern settler states of South America. To do so would have diluted the Australian and Aotearoa content—which itself is already narrowly confined to the areas specifically associated with IEJ.

There are (at least) two significant branches of theory left unexplored here. The first is the towering political theorist of the twentieth century—John Rawls. Rawls' is a distributive justice and individualist—so for those reasons alone, his theory is ill-suited to Indigenous IEJ. More fundamentally though he is wedded to an economic and political model that is predicated on growth (Watene, 2013). Endless material growth is antithetical to both IEJ and Indigenous principles of harmony and balance between human and nonhuman survival and wellbeing. The final area of concern is the state of whiteness behind the veil of ignorance. As Charles Mills describes in *Black Rights/White Wrongs*, the assumption within Rawls is that beyond the veil all emerge white (see particularly Chapters 8-10 pp139-200, Mills, 2017). While Mills is focussed primarily on the Black American experience, Rawls failed to see the brown faces of the Indigenous members of modern societies also.

More surprisingly perhaps, theories of recognition justice were not used to scaffold a decolonised framework for IEJ. Glenn Coulthard, however, has provided a robust analysis of recognition justice and the ways in which it perpetuates the colonial project in *Red Skin, White Masks* (Coulthard, 2014). In concluding the work Coulthard suggests we must shift our attention 'to a resurgent politics of recognition that seeks to practice decolonial, gender-emancipatory, and economically non-exploitative alternative structures of law and sovereign authority grounded on a critical refashioning of the best of Indigenous legal and political traditions' (Coulthard, 2014: 179). I have not accomplished that project; however, I do trust this work goes some way towards identifying some of those best traditions.

The work has not considered the intergenerational and environmental aspects of social inequality and inherited poverty resulting from colonisation and environmental alienation and degradation. It could well have, for future generations of Māori and Aboriginal people and their non-Indigenous compatriots will all bear the brunt of both. Nor has it explored the compound nature of Indigenous women's environmental and social disadvantage and the intergenerational components that reside with this intersectionality. Indigenous justice requires a decolonisation of gender (Meissner & Whyte, 2017). Likewise, I have not considered the intergenerational harms wrought by forced adoption, child theft, slavery and murders. These are more specifically intergenerational however they involve also the deep disconnection from homelands that contributes to the social dislocation and social dysfunction experienced by many Indigenous people globally.

I have skirted issues of spirituality—another of my false dissections—for 'all material is spiritual' to quote Manuka Henare (Int. MH). I allude to the transcendental frequently but have left aside any detailed analysis of spiritual connections between living and non-living, ancestors, living and future generations, human and earth, waters, seas and skies. There are two reasons for this. First, justice theory in the Western form negotiates relationships between humans. Spiritual negotiation is left to the church. Second, while my personal experiences of spiritual connection have arisen only within the grandeur of the mountains (specifically when tramping and skiing in the mountains and ranges of Aotearoa and again tramping and skiing in the Himalaya) and when at sea, I am a product of the rational age. I am an atheist. Delving into the spiritual is a deeply uncomfortable place for me to go. So I acknowledge the connection within *whakapapa* of spiritual and material, and I have worked with that in its most philosophic guise—*mauri, tapu* and *mana*—and this work could and perhaps, should, have included much more. This is a reflection of my own failing.

There is a raft of potential in ongoing conflicts between Indigenous Peoples and resource extraction industries and their political allies from which this thesis could have drawn and that opens the way for further study. In Aotearoa, there are the ongoing efforts of the Aotearoa government to open the Raukumara Basin, iron-sand mining in Taranaki and ongoing petroleum explorations in that province and the extensions to the Karangahape Gorge gold mine. In Australia there are the Adani Coal mine in the Galilee Basin of Queensland versus Wangan and Jagalingou people, the mining destruction in Western Australia and a proposed Queensland gold mine that is tearing an Aboriginal community apart, the fight by the people of the Kimberley over uranium mining, iron ore mining, fracking, and more. Additionally, the uranium mining in South Australia and the threat of oil exploration and mining the Great Australian Bight are areas of contention. And there are the North and South American, Indian and African, Pacific and European cases. The raw material is endless. My hope is this work provides a rung in the ladder of theory from which these wrongs can be addressed.

It is important to note also that Indigenous Peoples are not simply passive victims of environmental harms. Around the global active resistance movements lead by strong Indigenous people and Peoples are actively pursuing change in the areas of climate change action, adaptation planning, deforestation, and a raft of mining activities—these I have left unexamined.

…

Decolonising IEJ was not the original intent of this thesis. The intention was to answer the question of why Māori of Aotearoa and Aboriginal of Australia, and North and South American First Peoples embrace IEJ while Western societies wriggle and squirm from obligations to the environment and future generations. However, the case studies foist the issue of continuing colonial oppression onto these pages, over and over. In each circumstance, Apanui v Minister for Energy, Bob Randall's forced removal from his family to the far north of Australia, Warumungu's fight with the Australian federal government, a fight now transferred to the Adnyamathanha of South Australia, Rosalie Kunoth-Monk's cry for cultural recognition, the limits to Indigenous Peoples' freedom are circumscribed by foreign political philosophies. Those foreign political philosophies are far less adept at handling issues of IEJ than their own. So this became a work to decolonise IEJ. It became a work of reclamation—personal and theoretical: I live in the entangled intersection as did my ancestors as will my heirs.

References

Agamben, G. (2004). The Open. (K. Attell, Trans.). Stanford University Press.

Aho, Te, L. (2014). Ruruku Whakatupua Te Mana o te Awa Tupua.

Māori Law Review, (May).

Alfred, T. (1999). Peace, Power, Righteousness. Don Mills, Ontario: Oxford University Press.

Alfred, T. (2005). Wasáse. Retrieved May 29, 2017, from

https://www.mmduvic.ca/index.php/ctheory/article/view/14533/5380

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

Baer, P. (2006). The worth of an ice sheet. Retrieved June 2011, from

http://postnormaltimes.net/wpblog/?p=133

Ball, T. (1985). The incoherence of intergenerational justice. *Inquiry*, *28*(1-4), 321–337.

http://doi.org/10.1080/00201748508602055

Ball, T. (2008). The incoherence of intergenerational justice. *Inquiry: an Interdisciplinary Journal of Philosophy*, *28*(1-4), 321–337. http://doi.org/10.1080/00201748508602055

Barad, K. (2003). Posthumanist Performativity: Toward an Understanding of How Matter Comes to Matter. *Signs: Journal of Women in Culture and Society*, *28*(3), 801–831. http://doi.org/10.1086/345321

Barad, K. (2012). On Touching - The Inhuman That Therefore I Am. *Differences a Journal of Feminist Cultural Studies*, *25*(5), 206–223.

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

Barry, B. (2002). Justice as Impartiality. Oxford: Clarendon Press.

Bawaka Country, Suchet-Pearson, S., Wright, S., Lloyd, K., & Burarrwanga, L. (2013). Caring as Country: Towards an ontology of co-becoming in natural resource management. *Asia Pacific Viewpoint*, *54*(2), 185–197. http://doi.org/10.1111/apv.12018

Bay of Plenty Regional Council. (n.d.). Bay of Plenty Regional Council. Retrieved December 8, 2017, from https://www.boprc.govt.nz/media/276185/pollution-busters-newsletter-54-biodiversity-web.pdf

Bell, D. (2011). Does anthropogenic climate change violate human rights? *Critical Review of International Social and Political Philosophy*, *14*(2), 99–124. http://doi.org/10.1080/13698230.2011.529703

Bendik-Keymer, J. (2013). The Moral and the Ethical. In V. Gluchman (Ed.), *Morality* (pp. 11–24). Amsterdam: Rodopi.

Bendik-Keymer, J. (2014). From humans to all of life. In F. Comim & M. C. Nussbaum (Eds.), *Capabilities, Gender, Equality* (pp. 175–191). Cambridge University Press.

Bennett, J. (2004). The Force of Things. *Political Theory*, *32*(3), 347–372. Retrieved from http://www.jstor.org/stable/4148158

Best, E. (1925). Tuhoe, the Children of the Mist.

beyondnuclear. (2010). *Muckaty Voices* (Vol. 9). Retrieved from https://www.youtube.com/watch?v=xcuNpT84Ovo

Bhattacharya, A. (2017, March 21). India's sacred rivers now have human rights. Retrieved March 22, 2017, from https://qz.com/938190/the-ganga-and-yamuna-rivers-in-india-were-given-human-rights-to-protect-them-from-pollution/

Bird Rose, D. (2000). Dingo Makes Us Human. Cambridge University Press.

Bird Rose, D. (2011). Wild Dog Dreaming. Charlottesville and London: University of Virginia Press.

Bird Rose, D. (2012). Why I Don't Speak of Wilderness. *EarthSong*, (Spring 2012), 9–11.

Bodansky, D. (2001). The History of the Global Climate Change Regime. In U. L. D. F. Sprintz (Ed.), *International Relations and Global Climate Change*. Massachusetts Institute of Technology.

Bolivia. Law of the Rights of Mother Earth (2012). Retrieved from http://www.worldfuturefund.org/Projects/Indicators/motherearthbolivia.html

Bosselmann, K. (2011). From Reductionist Environmental Law to Sustainable Law. In *Exploring Wild Law* (pp. Loc 4256–Loc 4473). Wakefield Press.

Brundtland, G. H. (1987). *Our Common Future: Report of the World Commission on Environment and Development.* (U. Nations, Ed.). USA: United Nations.

Burarrwanga, L., Ritjilili, G., Ganambarr-Stubbs, M., Maymuru, D., Wright, S., Suchet-Pearson, S., et al. (2012). They Are Not Voiceless. In J. M. Coetzee, O. Sherman, W. Were, & S. Wyndham (Eds.), *The 2013 Voiceless Anthology* (Electronic edition). Allen & Unwin.

Burke, E. (n.d.). Reflections on the Revolution in France (Kindle Edition). Vook, Inc.

Butler, J., & Compagnoni, T. (2016, January 1). Bob Hawke Says Nuclear Waste Dump "A Win-Win" For Australia. Retrieved March 22, 2017, from http://www.huffingtonpost.com.au/2016/01/01/hawke-nuclear-waste-australia_n_8871578.html

Caney, S. (2000). Human rights, compatibility and diverse cultures. *Critical Review of International Social and Political Philosophy, 3 (1), 51-76. http://www.tandfonline.com/doi/abs/10.1080/13698230008403302*

Caney, S. (2005). Cosmopolitan Justice, Responsibility, and Global Climate Change. *Leiden Journal of International Law*, *18*, 747–775.

Caney, S. (2008). Human rights, climate change, and discounting. *Environmental Politics*, *17*(4), 536–555. http://doi.org/10.1080/09644010802193401

Caney, S. (2010a). Climate change, human rights and moral thresholds. In S. Humphries (Ed.), *Human Rights and Climate Change* (pp. 69–90). Cambridge: Cambridge University Press.

Caney, S. (2010b). Cosmopolitan Justice, Responsibility, and Global Climate Change. In S. C. D. J. A. H. S. Stephen M Gardiner (Ed.), *Climate Ethics: Essential Readings* (pp. 122–145). Oxford: Oxford University Press.

Caney, S. (2015). Global Basic Rights. (C. R. Beitz & R. E. Goodin, Eds.). Oxford University Press. http://doi.org/10.1093/acprof:osobl/9780199604388.001.0001

Carruthers, D. S. D. (2010). Indigenous Struggles, Environmental Justice, and Community Capabilities. *Global Environmental Politics*, *10*(4), 12–35.

Christian, David (2011). The history if our world in 18 minutes. https://www.ted.com/talks/david_christian_big_history, accessed 30 January 2017.

Clarkson, C., Jacobs, Z., Marwick, B., Fullagar, R., Wallis, L., Smith, M., et al. (2017). Human occupation of northern Australia by 65,000 years ago. *Nature*, *547*(7663), 306–310. http://doi.org/10.1038/nature22968

Collins, L. M. (2013). Security of the person, peace of mind: a precautionary approach to environmental uncertainty. *Journal of Human Rights and the Environment*, *4*(1), 79–100.

Confederation, S. Federal Constitution of the Swiss Confederation (1999). Switzerland. Retrieved from 101.en.pdf

Connell, R. (2007). Southern Theory. Sydney: Allen & Unwin.

Corntassel, J. (2012). Re-envisioning resurgence: Indigenous pathways to decolonization and sustainable self-determination. *Decolonization: Indigeneity*.

Coulthard, G. (2014). Red Skin White Masks. University of Minnesota Press.

Coyne, B. (2017, March 8). Does fracking violate human rights? Retrieved March 8, 2017, from http://www.humansandnature.org/how-the-dash-to-frack-harms-rights-ful-humans

Crutzen, P. (2002). Geology of Mankind. *Nature*, *415*.

Crown Minerals Act 1991. Crown Minerals Act 1991. 1991. Retrieved from https://www.nzpam.govt.nz/our-industry/rules-regulations/

Crutzen, P. J., & Stoermer, E. F. (2000). Geology of mankind -- The Anthropocene. *IGBP Newsletter*, *41*(12).

de-Shalit, A. (1995). Posterity Matters. Routledge.

Depledge, J. (2008). Striving for No: Saudi Arabia in the Climate Change Regime. *Global Environmental Politics*, *8*(4), 9–35.

Dodson, M. (1997). Land Rights and Social Justice. In G. Yunupingu (Ed.), *Our Land is Our life* (pp. 39–51). University of Queensland Press.

Donnelly, K. (2017, June 29). Radicals have taken over schools, universities and the media to impose politically correct agendas. Retrieved June 5, 2017, from http://www.dailytelegraph.com.au/news/opinion/radicals-have-taken-over-schools-universities-and-the-media-to-impose-politically-correct-agendas/news-story/842818fc3e6fe5db88e970c0784618b3

Dotson, K. (2011). Tracking Epistemic Violence, Tracking Practices of Silencing. *Hypatia*, *26*(2), 236–257.

Dotson, K. (2014). Conceptualizing Epistemic Oppression. *Social Epistemology*, *28*(2), 115–138. http://doi.org/http://dx.doi.org/10.1080/02691728.2013.782585

Dotson, K., & Whyte, K. P. (2013). Environmental Justice, Knowability and Unqualified Affectability. *Ethics & the Environment*, *18*(2), 55–79.

Dupuy, J.-P. (n.d.). Mourning the Future. Retrieved July 6, 2014, from

Durie, M. (1998). Te Mana, Te Kawanatanga. Auckland: Oxford University Press.

Durie, M. (2010). Outstanding universal value: how relevant is indigeneity? In R. Selby, P. Moore, & M. Mulholland (Eds.), *Māori and the Environment* (pp. 239–249). Wellington, Aotearoa New Zealand: Huia Publishers.

Dussel,E., Hernandez-La Iguana, C. Enrique Dussel: Without Epistemic Decolonization, There Is No Revolution. Retrieved 3 September, 2017, from https://venezuelanalysis.com/analysis/12734

Ecuador (2008). Constitution of the Republic of Ecuador. Retrieved from http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html

Endangered Species Organisation. The future of New Zealand's most vulnerable is uncertain. Retrieved 1 November, 2017, from http://www.endangeredspecies.org.nz/

Figueroa, R. M., & Waitt, G. (2008). Cracks in the Mirror: (Un)covering the Moral Terrains of Environmental Justice at Ulu ru-Kata Tju ta National Park. *Ethics, Place & Environment*, *11*(3), 327–349. http://doi.org/10.1080/13668790802559726

Francis, H. F. (2015). *Laudato Si'.* Vatican City: The Holy See.

Freygogle, E. (2012). Exploring Wild Law. In P. Burdon (Ed.), *The Philosophy of Earth Jurisprudence* (p. 368). Wakefield Press.

Frykberg, E. (2017) Govt hopes for more oil and gas exploration. Retrieved 11 August, 2017, from

https://www.radionz.co.nz/news/national/327218/govt-hopes-for-more-oil-and-gas-exploration

Fukuyama, F. (2002). The End of History and the Last Man. Perennial.

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

Gage, T. K. R. Affidavit of Te Kou Rikirangi Gage. (J. J. Gendall, Ed.) (June 22, 2012). Wellington.

Gammage, B. (2011). The Biggest Estate on Earth. Allen & Unwin.

Gardiner, S. M. (2004). Ethics and Global Climate Change. *Ethics*, *114*(3), 555–600.

Gardiner, S. M. (2009). Saved by Disaster? Abrupt Climate Change, Political Inertia, and the Possibility of an Intergenerational Arms Race. *Journal of Social Philosophy*, *40*(2), 140–162.

Gardiner, S. M. (2011a). A Perfect Moral Storm. Oxford University Press. http://doi.org/10.1093/acprof:oso/9780195379440.001.0001

Gardiner, S. M. (2011b). A Perfect Moral Storm: The Ethical Tragedy of Climate Change. (K. Shrader-Frechette, Ed.) *Environmental Ethics & Science Policy Series* (1st ed.). New York: Oxford University Press.

Gardiner, S. M., Caney, S., Jamieson, D., & Shue, H. (2010). Climate Ethics: Essential Readings. Oxford University Press.

Garnaut, R. (2008). The Garnaut Climate Change Review. Melbourne: Cambridge University Press.

Garnaut, R. (2011). *Garnaut Climate Change Review - Update 2011*. (W. G. O. au, Ed.). Commonwealth and State Governments of Australia.

Garvey, J. (2008). Ethics of Climate Change: Right and Wrong in a Warming World. (J. G. J. Stangroom, Ed.) *Think Now*. London: Continuum International Publishing Group.

Geiling, N. (2017, March 10). "We haven't lost…we have awakened": Indigenous nations march on the White House. Retrieved March 28, 2017, from https://thinkprogress.org/native-nations-march-on-washington-92f3d0f6effc

Gendall, J. J. CIV-2011-485-1897 [2012] NZHC 1422. (J. J. Gendall, Ed.) (June 22, 2012). Wellington.

Gonzalez, C. G. (2017). Environmental Racism, American Exceptionalism, and Cold War Human Rights. *Transnational Law Contemporary Problems*, *26*, 281–315.

Goodin, R. E. (1999). The Sustainability Ethic: Political, Not Just Moral. *Journal of Applied Philosophy*, *16*(3), 247–254.

Gough, M. (2015, May 19). Aboriginal legends reveal ancient secrets to science. Retrieved July 4, 2017, from http://www.bbc.com/news/world-australia-32701311

Government, N. Z. (n.d.) *Whanganui River Deed of Settlement Ruruku Whakatupua*. New Zealand Government. Retrieved from https://www.govt.nz/treaty-settlement-documents/whanganui-iwi/

Graham, L., & Friederichs, N. (2012). Indigenous Peoples, Human Rights, and the Environment. *Yale Human Rights and Environment Dialogues Spring Report*. Retrieved from http://ssrn.com/abstract=1979745

Graham, M. (1999). Some Thoughts about the Philosophical Underpinnings of Aboriginal Worldviews. *Worldviews: Environment*, *3* (1999), 105–118.

Graham, M. (2008). Some Thoughts about the Philosophical Underpinnings of Aboriginal Worldviews. *Australian Humanities Review*, *45* (November 2008), 181–194.

Graham, M. (2013). Custodial Navigator. Retrieved December 2, 2017, from http://colourise.com.au/text-2/

Graham, N. (2012). Owning the Earth. In P. Burdon (Ed.), *Exploring Wild Law*.

Grant, R. W. (1988). Locke's Political Anthropology and Individualism. *Journal of Politics*, *50*, 42–63.

Gray, R. (2015, January 28). Stories of ancient sea level rise may have survived for 10,000 years. *Daily Mail Australia*. Retrieved from http://www.dailymail.co.uk/sciencetech/article-2929775/Aboriginal-folklore-oldest-accurate-oral-history-world-Stories-ancient-sea-level-rise-survived-10-000-years.html

Greene, H. F. (2011). Cosmology and Earth Jurisprudence. In P. Burdon (Ed.), *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (pp. 126–136). Kent Town, South Australia: Wakefield Press.

Habermas, J. (2010). The Concept of Human Dignity and the Realistic Utopis of Human Rights. *Metaphilosophy*, *41*(4), 464–480. http://doi.org/10.1111/j.1467-9973.2010.01648.x

Haraway, D. (2016). Staying with the Trouble. Durham and London: Duke University Press.

Hayward, T. (2007). Human Rights versus Emissions Rights. *Ethics and International Affairs*, *21*(4), 431–450. http://doi.org/https:/www.cambridge.org/core/terms. https://doi.org/10.1111/j.1747-7093.2007.00117.x

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

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

Henderson, A. (2014, November 15). Prime Minister Tony Abbott describes Sydney as "nothing but bush" before First Fleet arrived in 1788. Retrieved July 5, 2017, from http://www.abc.net.au/news/2014-11-14/abbot-describes-1778-australia-as-nothing-but-bush/5892608

Heyd, D. (2014). Parfit on the Non-identity Problem, Again. *Law & Ethics of Human Rights*, *8*(1), 1–20. http://doi.org/10.1515/lehr-2014-0003

Hiskes, R. P. (2005). The Right to a Green Future: Human Rights, Environmentalism, and Intergenerational Justice. *Human Rights Quarterly*, *27*(4), 1346–1364. http://doi.org/10.1353/hrq.2005.0049

Hiskes, R. P. (2009). The Human Right to a Green Future: Environmental Rights and Intergenerational Justice. USA: Cambridge University Press.

Hoagland, S. L. (2007). Denying Relationality: Epistemology & Ethics & Ignorance. In S. Sullivan & N. Tuana (Eds.), *Race and Epistemologies of Ignorance* (pp. 95–118). Albany: State University of New York Press.

Holland, B. (2008a). Ecology and the Limits of Justice: Establishing Capability Ceilings in Nussbaum's Capabilities Approach. *Journal of Human Development*, *9*(3), 401–425. http://doi.org/10.1080/14649880802236631

Holland, B. (2008b). Justice and the Environment in Nussbaum's 'Capabilities Approach': Why Sustainable Ecological Capacity Is a Meta-Capability. *Political Research Quarterly*, *61*(2), 319–332. http://doi.org/10.1177/1065912907306471

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

International Organisation for Migration. (2009). *Climate change, migration, and displacement: impacts, vulnerability, and adaptation options*. UNFCCC AWG-LCA 5).

Irom, A. (2014). *Diane Stokes at Muckaty 1* (Vol. 5). Retrieved from https://www.youtube.com/watch?v=HWsy_RHWblE

Irvine, R. D. G. (2014). Deep Time: An Anthropological Problem. *Social Anthropology*, *22*(2), 157–172.

Ivison, D. (2000). Political Theory and the Rights of Indigenous Peoples. Cambridge University Press.

Ivison, D. (2003). The Logic of Aboriginal Rights. *Ethnicities*, *3*(3), 321–344. http://doi.org/10.1177/14687968030033003

Ivison, D. (2011). "Another World Is Actual": Between Imperialism and Freedom. *Political Theory*, *39*(1), 131–137. http://doi.org/10.1177/0090591710386553

Jamieson, D. (2010). Adaptation, Mitigation and Justice. In Stephen M Gardiner et al. (Ed.), *Climate Ethics: Essential Readings* (pp. 263–283). Oxford: Oxford University Press.

Joy, M. (2017). New Zealand's 100% Pure, Clean-Green myth. Presented at the Environmental Justice Conference 2017, Sydney, Australia.

Kateb, G. (2011). Human Dignity. Harvard University Press.

Kawharu, M. (2010). Environment as a marae locale. In R. Selby, P. Moore, & M. Mulholland (Eds.), *Māori and the Environment* (pp. 221–237). Wellington, Aotearoa New Zealand: Huia Publishers.

Keenan, S. (2014). Moments of Decolonization. *Canadian Journal of Law and Society*, *29*(2), 163–180. http://doi.org/10.1353/jls.2014.0019

King, M. (Ed.). (1992). Te Ao Hurihuri. Reed.

Kinninment, M. (2016, December 28). Bob Hawke pushes nuclear power at Woodford Folk Festival. Retrieved March 22, 2017, from http://www.abc.net.au/news/2016-12-28/we-must-embrace-nuclear-power-bob-hawke-divides-audience/8151346

Knaus, C. (2017, June 27). Census 2016. Retrieved July 4, 2017, from https://www.theguardian.com/australia-news/live/2017/jun/27/census-2016-results-religion-income-family-migration-population-live

Krause, S. R. (2015). Freedom Beyond Sovereignty. Chicago and London: University of Chicago Press. http://doi.org/10.7208/chicago/9780226234724.001.0001

Kumar, R. (2003). Who Can Be Wronged? *Philosophy & Public Affairs*, *31*(2), 99–118.

Kunoth-Monk, R. (2014, June 9). Rosalie Kunoth-Monk. Sydney. Retrieved from https://www.youtube.com/watch?v=birnA3_tm5E

Kymlicka, W. (1994). Communitarianism, liberalism, and superliberalism. *Critical Review*, *8*(2), 263–284. http://doi.org/10.1080/08913819408443338

LaPier, R. R. (2017, March 25). Why water is so sacred to Native Americans. Retrieved March 25, 2017, from http://grist.org/article/why-water-is-so-sacred-to-native-americans/

Lee, M. (2006). *Kanyini.* (M. Hogan, Ed.) (Vol. 53). Retrieved from https://www.youtube.com/watch?v=fAOcfkcGDKA

Leopold, A. (1968). A Sand Country Almanac. Oxford University Press.

Levin, S. (2017a, February 11). Army veterans return to Standing Rock to form a human shield against police. Retrieved March 28, 2017, from

Levin, S. (2017b, February 19). Standing Rock: DoJ steps up aggression against those still battling the pipeline. Retrieved March 28, 2017, from

https://www.theguardian.com/us-news/2017/feb/18/standing-rock-activists-justice-depart ment-new-arrests

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

Love, T., & Tilley, E. (2013). Temporal Discourse and the News Media Representation of Indigenous-Non-Indigenous Relations. *Media International Australia*, (149), 174–188.

MacIntyre, A. (1984). After Virtue (Second Edition). Notre Dame, Indiana: University of Notre Dame Press.

Mathews, F. (2008). Thinking from Within the Calyx of Nature. *Environmental Values*, *17*(1), 41–65. http://doi.org/www.jstor.org/stable/30302623

McKay, B., & Walmsley, A. (2003). Maori Time: Notions of Space, Time and Building Form in the South Pacific. *Idea*.

Mead, H. M. (2003). Tikanga Māori. Wellington, Aotearoa New Zealand: Huia publishers.

Meissner, S. N., & Whyte, K. P. (2017). Theorizing Indigeneity, Gender, and Settler Colonialism. In *Forthcoming 2017, The Routledge Companion to the Philosophy of Race* (pp. 1–22).

Memmi, A. (2003). The Colonizer and the Colonized. Earthscan Publications.

Metge, J., & Kinloch, P. (1992). Talking Past Each Other. Wellington, New Zealand: Victoria University Press.

Meyer, J. M. (2015). Engaging the Everyday. MIT Press. Retrieved from http://www.jstor.org/stable/j.ctt17kk88gp.8

Mikaere, A. (2005). Cultural Invasion Continued: The Ongoing Colonisation of Tikanga Māori. *Yearbook of New Zealand Jurisprudence Special Issue - Te Purenga*, *8*(2), 134–172.

Mill, J. S. (n.d.). Utilitarianism. Public Domain Books. Kindle Edition.

Mill, J. S. (2004). Principles of Political Economy to Social Philosophy: with Some of Their Applications. Indianapolis and Cambridge. Hackett Publishing Co, Inc.

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

Mills, C. W. (2007). White Ignorance. In S. Sullivan & N. Tuana (Ed.), *Race and Epistemologies of Ignorance* (pp. 13–38). Albany, New York: State University of New York Press.

Mills, C. W. (2017). Black Rights/White Wrongs. Oxford University Press.

Ministry for Primary Industries. (2016) The Status of New Zealand's Fisheries 2016. The New Zealand Government. Retrieved from http://www.mpi.govt.nz/dmsdocument/11950

Moellendorf, D. (2009). Justice and the Assignment of Intergenerational Costs of Climate Change. *Journal of Social Philosophy*, *40*(2), 204–224.

Mohai, P., Pellow, D. N., & Roberts, J. T. (2009). Environmental Justice. *Annual Review of Environment and Resources*, *34*(1), 405–430. http://doi.org/10.1146/annurev-environ-082508-094348

Moreton-Robinson, A. (2015). The White Possessive. Minneapolis: University of Minnesota Press. http://doi.org/10.5749/j.ctt155jmpf

Morton, T. (2017). Humankind. London; Brooklyn, New York: Verso Books.

Muecke, S. (2004). Ancient and Modern. UNSW Press.

New Zealand Government. Te Awa Tupua (Whanganui River Claims Settlement) Bill 2016, Digests. https://www.parliament.nz/en/pb/bills-and-laws/bills-digests/document/51PLLaw23521/te-awa-tupua-whanganui-river-claims-settlement-bill-2016, accessed 06/01/2017.

New Zealand Government. Te Urewera Act 2014. Retrieved from http://www.legislation.govt.nz/act/public/2014/0051/latest/DLM6183601.html

Nielson, Kai (2009). Reconceptualizing Civil Society for Now: Some Somewhat Gramscian Turnings. In M. Walzer (Ed.), Towards a Global Civil Society. New York: Berghahn Books.

Nordhaus, W. D. (2008). A Question of Balance: Weighing the options on global warming policies. New Haven: Yale University Press.

Nordhaus, W. D. (2016). *Projections and Uncertainties about Climate Change in an Era of Minimal Climate Policies* (No. 2057). New Haven, Connecticut: Cowles Foundation for Research in Economics. Retrieved from https://www.scribd.com/document/335688297/Nordhaus-climate-economics

Nozick, R. (1999) Anarchy, State, and Utopia. Oxford, U.K. Blackwell.

Nussbaum, M. C. (2000). Women and Human Development. Cambridge: Cambridge University Press.

Nussbaum, M. C. (2004). Beyond "Compassion and Humanity." In C. R. Sunstein & M. C. Nussbaum (Eds.), *Animal Rights* (pp. 299–320). New York: Oxford University Press.

Nussbaum, M. C. (2007). Frontiers of Justice. Cambridge, Mass: The Belknap Press of Harvard University Press.

Nussbaum, M. C. (2011). Creating Capabilities: A Human Development Approach. The Belknap Press of Harvard University Press.

O'Donnell, E., & Talbot-Jones, J. (2017, April 20). Will giving the Himalayas the same rights as people protect their future? Retrieved May 15, 2017, from https://pursuit.unimelb.edu.au/articles/will-giving-the-himalayas-the-same-rights-as-people-protect-their-future

O'Neill, J. (1993). Future Generations: Present Harms. *Philosophy*, *68*(35), 35–51.

Page, E. A. (1999). Intergenerational Justice and Climate Change. *Political Studies*, *XLVII*, 53–66.

Page, E. A. (2007a). Fairness on the Day after Tomorrow. *Political Studies*, *55*, 225–242. http://doi.org/doi: 10.1111/j.1467-9248.2007.00649.x

Page, E. A. (2007b). Intergenerational Justice of What: Welfare, Resources or Capabilities? *Environmental Politics*, *16*(3), 453–469. http://doi.org/10.1080/09644010701251698

Panelli, R., & Tipa, G. (2007). Placing Well-Being. *EcoHealth*, (4), 445–460. http://doi.org/DOI: 10.1007/s10393-007-0133-1

Parfit, D. (1984). Reasons and Persons. Oxford: Clarendon Press.

Parfit, D. (2011). On What Matters (Vol. 1). Oxford: Oxford University Press.

Pearson, N. (1997). The Concept of Native Title in Law. In G. Yunupingu (Ed.), *Our Land is Our life* (pp. 150–161). University of Queensland Press.

Pellow, D. N. (2016). Toward a Critical Environmental Justice Studies. *Du Bois Review: Social Science Research on Race*, *13*(2), 221–236. http://doi.org/10.1017/S1742058X1600014X

Povinelli, E. A. (2016). Geontologies. Duke University Press.

Povinelli, E. A. (2014, January 13). Geontologies of the Otherwise. Retrieved January 4, 2017, from https://culanth.org/fieldsights/465-geontologies-of-the-otherwise

Purdy, J. (2015). After Nature. Cambridge, Massachusetts: Harvard University Press.

Rahner, K. (1993). The Content of Faith. The Crossroad Publishing Co.

Randall, B. (2003). Songman. (P. Newbury, Ed.). Sydney Australia: ABC Books.

Randall, B. (2007). Kanyini. *Resurgence Ecologist*, (243). Retrieved from http://www.resurgence.org/magazine/article132-Kanyini.html

Rawls, J. (2009). A Theory of Justice. Harvard University Press.

Raz, J. (1989). Liberating duties. *Law and Philosophy*, *8*(1), 3–21. http://doi.org/10.1007/BF00142892

Regan, T. (2004). The Case for Animal Rights. University of California Press.

Reid, N., & Nunn, P. D. (2015, January 13). Ancient Aboriginal stories preserve history of a rise in sea level. Retrieved July 5, 2017, from https://theconversation.com/ancient-aboriginal-stories-preserve-history-of-a-rise-in-sea-level-36010?sa=google&sq=Nick+Reid&sr=1

Reyburn, B. (1988). The Forgotten Struggle of Australia's Aboriginal People. *Cultural Survival Quarterly*, *12*(3). Retrieved from culturalsurvival.org/publications/cultural-survival-quarterly/forgotten-struggle-aboriginal-people

Robb, P. (2012). Lives. Collingwood, Australia: Black Inc.

Roberts, M. (2010). Mind maps of the Maori. *GeoJournal*, *77*(6), 741–751. http://doi.org/10.1007/s10708-010-9383-5

Roberts, M., Haami, B., Benton, R. A., Satterfield, T., Finucane, M. L., & Henare, M. (2004). Whakapapa as a Maori Mental Construct: Some Implications for the Debate over Genetic Modification of Organisms. *The Contemporary Pacific*, *16*(1), 1–28. http://doi.org/10.1353/cp.2004.0026

Rockstrom, J., Steffen, W., Noone, K., Persson, Å., Chapin, F. S., Lambin, E. F., et al. (2009). A safe operating space for humanity. *Nature*, *461*(7263), 472–475. http://doi.org/10.1038/461472a

Rosen, M. (2012). Dignity. Harvard University Press.

Ruckstuhl, K., Thompson-Fawcett, M., & Rae, H. (2014). Māori and mining. *Impact Assessment and Project Appraisal*, *32*(4), 304–314. http://doi.org/http://dx.doi.org/10.1080/14615517.2014.929782

Saccà, L. (2013). A Biophilosophical Model of Human Dignity. *International Journal of Applied Philosophy*, *27*(2), 175–194. http://doi.org/10.5840/ijap20131221

Salmond, A. (2014). Tears of Rangi. *HAU, a Journal of Ethnographic Theory*, *4*(3), 285–309.

Sampson, E. E. (1988). The Debate on Individualism. *American Psychologist*, *43*(1), 15–22.

Sandel, M. J. (2009). Justice. New York: Farrar, Straus and Giroux.

Schachter, O. (1983). Human Dignity as a Normative Concept. *The American Journal of International Law*, *77*(4), 848–854.

Schinkel, A. (2008). Martha Nussbaum on Animal Rights. *Ethics and Environment*, (13), 41–69. http://doi.org/10.1353/een.0.0000

Schlosberg, D. (1999). Environmental Justice and the New Pluralism: The Challenge of Difference for Environmentalism. Oxford University Press. http://doi.org/10.1093/0199256411.001.0001

Schlosberg, D. (2004). Reconceiving Environmental Justice: Global Movements and Political Theories. *Environmental Politics*, *13*(3), 517–540. http://doi.org/10.1080/0964401042000229025

Schlosberg, D. (2009). Defining Environmental Justice. Oxford University Press on Demand.

Schlosberg, D. (2012a). Climate Justice and Capabilities: A Framework for Adaptation Policy. *Ethics and International Affairs*, *26*(4), 445–461. http://doi.org/10.1017/So892679412000615

Schlosberg, D. (2012b). Justice, Ecological Integrity, and Climate Change. In A. Thompson & J. Bendik-Keymer (Eds.), *Ethical Adaptation to Climate Change: Human Virtues of the Future* (pp. 165–183). Cambridge, Mass.: The MIT Press.

Schlosberg, D. (2013). Theorising environmental justice: the expanding sphere of a discourse. *Environmental Politics*, *22*(1), 37–55. http://doi.org/10.1080/09644016.2013.755387

Schlosberg, D. (2014). Ecological Justice for the Anthropocene. In M. Wissenburg & D. Schlosberg (Eds.), *Political Animals and Animal Politics* (pp. 75–89). London, UK: Palgrave Macmillan.

Schroeder, D. (2010). Dignity: One, Two, Three, Four, Five, Still Counting. *Cambridge Quarterly of Healthcare Ethics*, *19*(01), 118–125. http://doi.org/10.1017/S0963180109990302

Schroeder, D. (2012). Human Rights and Human Dignity. *Ethical Theory and Moral Practice*, *15*(3), 323–335. http://doi.org/10.1007/s10677-011-9326-3

Schwimmer, E. (Ed.). (1968). The Māori People in the Nineteen-Sixties. Blackwood & Janet Paul Ltd.

Scoop. (2012, December 4). Petrobras announces it ain't loving' it in New Zealand. Retrieved May 8, 2016, from

Selby, R., Moore, P., & Mulholland, M. (Eds.). (2010). Māori and the Environment. Wellington, Aotearoa New Zealand: Huia Publishers.

Sen, A. (2009). The Idea of Justice (Paper back). USA: Harvard University Press.

Sen, A. (2013). The Ends and Means of Sustainability. *Journal of Human Development and Capabilities: a Multi-Disciplinary Journal for People-Centred Development*, *14*(1), 6–20. http://doi.org/10.1080/19452829.2012.747492

Sharifian, F. (2006). A cultural-conceptual approach and world Englishes: the case of Aboriginal English. *World Englishes*, *25*(1), 11–22. http://doi.org/10.1111/j.0083-2919.2006.00444.x

Shirres, M. P. (1982). Tapu. *The Journal of the Polynesian Society*, *91*(1), 29–51. Retrieved from http://www.jstor.org/stable/20705620

Shue, H. (2010). Subsistence Emissions and Luxury Emissions. In Stephen M Gardiner et al. (Ed.), *Climate Ethics: Essential Readings* (pp. 200–213). Oxford: Oxford University Press.

Shuttleworth, K. (2012, Thursday). Agreement entitles Whanganui River to legal identity. *The New Zealand Herald*, National. Auckland, New Zealand: APN Holdings NZ Limited.

Sinclair, D. (1992). Land. In M. King (Ed.), *Te Ao Hurihuri* (pp. 65–105). Reed.

Singer, P. (2010). One Atmosphere. In S. C. D. J. A. H. S. Stephen M Gardiner (Ed.), *Climate Ethics: Essential Readings* (pp. 181–199). Oxford: Oxford University Press.

Sinnott-Armstrong, W. (2010). It's Not My Fault. In Stephen M Gardiner et al. (Ed.), *Climate Ethics: Essential Readings* (pp. 332–346). New York: Oxford University Press.

SoftBank Corporate Group, (2017). Corporate Vision. Retrieved from https://www.softbank.jp/en/corp/about/philosophy/vision/

StatsNZ. (n.d.). StatsNZ. Retrieved November 16, 2017, from http://www.stats.govt.nz

Steffen, W., Crutzen, P. J., & McNeill, J. R. (2009). The Anthropocene: Are Humans Now Overwhelming the Great Forces of Nature. *Dx.Doi.org*, *6*(1), 9–35. http://doi.org/10.1579/0044-7447(2007)36[614:TAAHNO]2.0.CO;2

Stephenson, J. (2001). Recognising Rangatiratanga in Resource Management for Maori Land: A Need for a New Set of Arrangements? *New Zealand Journal of Environmental Law*, 159–193.

Stern, N. (2007). The Economics of Climate Change: The Stern Review. Cambridge: Cambridge University Press.

Stern, N. (2009a). The Economics of Climate Change. Oxford: Cambridge University Press.

Stern, N. (2009b). The global deal. New York: PublicAffairs.

Stern, N. (2010). The Economics of Climate Change. In Stephen M Gardiner et al. (Ed.), *The Economics of Climate Change* (pp. 39–76). Oxford: Oxford University Press.

Stewart-Harawira, M. (2005). The New Imperial Order. Wellington: Huia Publishers.

Stone, C. D. (1972). Should Trees Have Standing--Toward Legal Rights for Natural Objects. *Southern California Law Review*, *45*(450), 450–501.

Sullivan, S. (2007). White Ignorance and Colonial Oppression. In S. Sullivan & N. Tuana (Eds.), *Race and Epistemologies of Ignorance* (pp. 153–172). Albany: State University of New York Press.

Taguiam, Rhenn A. (2017). Plants May Be Able to See, Scientists Discover. *Nature World News*, Jan 11, 2017. http://www.natureworldnews.com/articles/34960/20170111/plants-see-scientists-discover.htm, accessed 12/01/2017.

Tanasescu, M. (2013). The rights of nature in Ecuador: the making of an idea. *International Journal of Environmental Studies*, *70*(6), 846–861. http://doi.org/10.1080/00207233.2013.845715

Tanasescu, M. (2014). Rethinking representation: The challenge of non-humans. *Australian Journal of Political Science*, *49*(1), 40–53. http://doi.org/10.1080/10361146.2013.874404

Tanasescu, M. (2015). Nature Advocacy and the Indigenous Symbol. *Environmental Values*, *24*(1), 105–122. http://doi.org/10.3197/096327115X14183182353863

Taylor, C. (1997). Philosophical Arguments. Cambridge, Massachusetts: Harvard University Press.

Te Punga Sommerville, A. (2012). One Were Pacific. Minneapolis: University of Minnesota Press.

Thompson, J. (2009). Identity and Obligation in a Transgenerational Polity. In A. G. A. K. H. Meyer (Ed.), *Intergenerational Justice* (pp. 25–49). Oxford: Oxford University Press.

Thompson, J. (2010). What is Intergenerational Justice? *Future Justice*, *2010*(5), 5–20.

Thornton, J. (1985). Field Guide to New Zealand Geology. Auckland: Heinemann Reed.

Tobler, R., Rohrlach, A., Soubrier, J., Bover, P., Llamas, B., Tuke, J., et al. (2017). Aboriginal mitogenomes reveal 50,000 years of regionalism in Australia, *345*, 153–169. http://doi.org/10.1038/nature21416

Tuckness, A. (2005, November 9). Locke's Political Philosophy. Retrieved January 11, 2016, from http://plato.stanford.edu/archives/win2012/entries/locke-political/

Tully, J. (2002). The Struggle of Indigenous Peoples for and of Freedom. In D. Ivison, P. Patton, & W. Sanders (Eds.), *Political Theory and the Rights of Indigenous Peoples* (pp. 36–59). Cambridge University Press.

Turia, T. (2012, Tuesday). The river is calling ... but are we ready to answer. *The New Zealand Herald*, p. National. Auckland, New Zealand: APN Holdings NZ Limited.

Turner, D. (2008). This Is Not a Peace Pipe. Toronto, Buffalo, London: University of Toronto Press.

United Nations Development Group. (2009). Guidelines on Indigenous Peoples' Issues. New York & Geneva: United Nations. Retrieved from http://www.ohchr.org/Documents/Publications/UNDG_training_16EN.pdf

United Nations. (2010). Universal Declaration of the Rights of Mother Earth. Retrieved from http://therightsofnature.org/wp-content/uploads/FINAL-UNIVERSAL-DECLARATION-OF-THE-RIGHTS-OF-MOTHER-EARTH-APRIL-22-2010.pdf

United Nations (1948). The Universal Declaration of Human Rights.

United Nations. (1992). United Nations Framework Convention on Climate Change. Presented at the Rio Earth Summit, Rio de Janeiro: United Nations.

United Nations. (2011). Human Development Report 2011. New York & Geneva: United Nations.

United Nations. (2013). State of the World's Indigenous Peoples. Retrieved from http://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/SOWIP_Health.pdf

United Nations. (2015). The universal declaration of human rights. New York: United Nations General Assembly. Retrieved from http://www.un.org/en/documents/udhr/

United Nations Population Division. (2017). World Urbanization Prospects, the 2014 revision. New York & Geneva: United Nations. Retrieved from https://esa.un.org/unpd/wup/DataQuery/

Vines, T., Bruce, A., & Faunce, T. (2013). Planetary Medicine and the Waitangi Tribunal Whanganui River Report. *Journal of Law & Medicine*, *20*(3), 528–541. Retrieved from http://www.westlaw.com.au.ezproxy1.library.usyd.edu.au/maf/wlau/app/document?&src=search&docguid=I4fca54018d0c11e2aa27eb930ac019af&epos=7&snippets=true&fcwh=true&startChunk=1&endChunk=1&nstid=std-anz-highlight&nsds=AUNZ_SEARCHALL&isTocNav=true&tocDs=AUNZ_AU_JOURNALS_TOC&context=35&extLink=false&searchFromLinkHome=true

Vogel, S. (2006). The Silence of Nature. *Environmental Values*, *15*(2), 145–171. http://doi.org/www.jstor.org/stable/30302146

Waldron, J. (2012). Dignity, Rank, and Rights. (M. Dan-Cohen, Ed.). Oxford University Press. http://doi.org/10.1093/acprof:oso/9780199915439.001.0001

Walia, Harsha (2015). "Land is a Relationship': In Conversation with Glen Coulthard on Indigenous nationhood. *rabble.ca.* January 21, 2015. http://rabble.ca/columnists/2015/01/land-relationship-conversation-glen-coulthard-on-Indigenous-nationhood accessed 5 July 2016.

Walker, R. (1992). The Relevance of Māori Myth and Tradition. In M. King (Ed.), *Te Ao Hurihuri* (pp. 170–182). Reed.

Walzer, M. (1990). The Communitarian Critique of Liberalism. *Political Theory*, *18*(1), 6–23.

Watene, K. (2013). Nussbaum's Capability Approach and Future Generations. *Journal of Human Development and Capabilities: a Multi-Disciplinary Journal for People-Centred Development*, *14*(1), 21–39. http://doi.org/10.1080/19452829.2012.747488

Watene, K. (2016). Valuing nature: Māori philosophy and the capability approach. *Oxford Development Studies*, *44*(3), 287–296. http://doi.org/10.1080/13600818.2015.1124077

Watene, K., & Yap, M. (2015). Culture and sustainable development: Indigenous contributions, 1–6. http://doi.org/10.1080/17449626.2015.1010099

Watson, I. (1998). Naked peoples: rules and regulations. *Law Text Culture*, *4*(1), 1–17. Retrieved from http://ro.uow.edu.au/ltc/vol4/iss1/2

Watson, I. (2000). Kaldowinyeri - Munaintya in the Beginning. *Flinders Journal of Law Reform*, *4*(3), 3–17.

Watson, I. (2002). Buried Alive, *13*, 253–269.

Watson, I. (2015). Aboriginal Peoples, Colonialism and International Law. Abingdon, Oxon: Routledge.

Weston, B. H. (2012). The Theoretical Foundations of Intergenerational Ecological Justice: An Overview. *Human Rights Quarterly*, *34*(1), 251–266. http://doi.org/10.1353/hrq.2012.0003

Whyte, K. P. (2011). The Recognition Dimensions of Environmental Justice in Indian Country. *Environmental Justice*, *4*(4), 199–205. http://doi.org/10.1089/env.2011.0036

Whyte, K. P. (2013). Justice forward: Tribes, climate adaptation and responsibility. *Climatic Change*, *120*(3), 517–530. http://doi.org/10.1007/s10584-013-0743-2

Whyte, K. P. (2014). Indigenous Women, Climate Change Impacts, and Collective Action. *Hypatia*, *29*(3), 599–616.

Whyte, K. P. (2016). Indigeneity and US Settler Colonialism. In N. Zack (Ed.), *Oxford Handbook of Philosophy and Race.* (pp. 1–20).

Whyte, K. P. (2017). Is it colonial déjà vu? In J. Adamson & M. Davis (Eds.), *Humanities for the Environment* (pp. 88–105). London & New York: Earthscan.

Willemsen, A. *The dignity of living beings with regard to plants*. (A. Willemsen, Ed.). Berne: Federal Ethics Committee on Non-Human Biotechnology, ECNH. Retrieved from www.ekah.admin.ch

Williams, D. (2001). Matauranga Maori and Taonga. Wellington, New Zealand: Waitangi Tribunal.

Williams, K. (n.d.). Volcanoes of the South Wind. Tongariro Natural History Society.

Wise, S. M. (2004). Animal Rights, One Step at a Time. In C. R. Sunstein & M. C. Nussbaum (Eds.), *Animal Rights* (pp. 19–50). New York: Oxford University Press.

Wohlleben, P. (2016). The Hidden Life of Trees. Black Inc.

Wootten, H. (2015, December 11). Lessons that Tony Abbott failed. Retrieved July 5, 2017, from http://www.smh.com.au/comment/lessons-that-tony-abbott-failed-20151211-gllg0x.html

Yong, E. (2016). I Contain Multitudes. Harper Collins.

Young, I. M. (2011). Justice and the Politics of Difference. Princeton University Press.

Yunupingu, G. (1997). From Bark Petition to Native Title. In G. Yunupingu (Ed.), *Our Land is Our life*. University of Queensland Press.

Zalasiewicz, J. (2008). Are we now living in the Anthropocene? *GSA Today, 18*(2), 4–8. http://doi.org/10.1130/GSAT01802A.1

Zalasiewicz, J., Williams, M., Fortey, R., Smith, A., Barry, T. L., Coe, A. L., et al. (2011). Stratigraphy of the Anthropocene. *Philosophical Transactions of the Royal Society a:*

Mathematical, Physical and Engineering Sciences, *369*(1938), 1036–1055. http://doi.org/10.1098/rsta.2010.0315

Appendix A: Submissions and Affidavits to CIV-2011-485-1897 [2012]NZHC 1422

Documents held in the High Court of New Zealand Wellington Registry
Relating to CIV-201-485-1897

Notice of Filing of Claim. CA 429/2012

Notice of Appeal. CA 429/2012

Statement of Claim. 16 September 2011

First Respondents Statement of Defence. 21 October 2011

First Respondent's Notice requiring further & better particulars of the Applicant's Statement of Claim Dated 16 September 2011. 21 October 2011

Affidavit of Rikirangi Gage. 29 February 2012

Affidavit of Gerard Anthony Brownlee, Minister of the Crown. 23 April 2012

Submissions of the Applicants. 22 May 2012

Submissions of Second Respondent. 30 May 2012

Affidavit of Robert Noel Robson. 5 June 2012

Second Affidavit of Robert Noel Robson. 5 June 2012

Memorandum-to Hon. Justice Miller, from Sarah Jacobs. 29 May 2012

RNR 1 - 45
Exhibits referred to in Affidavit of Robert Noel Robson. 23 April 2012

Appendix B: Ethics

THE UNIVERSITY OF SYDNEY

Research Integrity
Human Research Ethics Committee

Monday, 12 January 2015

Prof David Schlosberg
Government & International Relations
Faculty of Arts and Social Sciences
Email: david.schlosberg@sydney.edu.au

Dear David

I am pleased to inform you that the University of Sydney Human Research Ethics Committee (HREC) has approved your project entitled "**A Future Crippled by Wilful Neglect: Intergenerational, Environment, & Indigenous Justice**".

Details of the approval are as follows:

Project No.:   2014/983

Approval Date: 12 January 2015

First Annual Report Due: 12 January 2016

Authorised Personnel: Schlosberg David; Winter Christine

Documents Approved:

Date Uploaded	Type	Document Name
11/11/2014	Interview Questions	Interview Questions
16/12/2014	Participant Consent Form	Participant Consent Form
16/12/2014	Participant Info Statement	Participant Information Statement

HREC approval is valid for four (4) years from the approval date stated in this letter and is granted pending the following conditions being met:

Condition/s of Approval

- Continuing compliance with the National Statement on Ethical Conduct in Research Involving Humans.

- Provision of an annual report on this research to the Human Research Ethics Committee from the approval date and at the completion of the study. Failure to submit reports will result in withdrawal of ethics approval for the project.

- All serious and unexpected adverse events should be reported to the HREC within 72 hours.

- All unforeseen events that might affect continued ethical acceptability of the project should be reported to the HREC as soon as possible.

THE UNIVERSITY OF SYDNEY

- Any changes to the project including changes to research personnel must be approved by the HREC before the research project can proceed.

- Note that for student research projects, a copy of this letter must be included in the candidate's thesis.

Chief Investigator / Supervisor's responsibilities:

1. You must retain copies of all signed Consent Forms (if applicable) and provide these to the HREC on request.

2. It is your responsibility to provide a copy of this letter to any internal/external granting agencies if requested.

Please do not hesitate to contact Research Integrity (Human Ethics) should you require further information or clarification.

Yours sincerely

Professor Glen Davis
Chair
Human Research Ethics Committee

This HREC is constituted and operates in accordance with the National Health and Medical Research Council's (NHMRC) National Statement on Ethical Conduct in Human Research (2007), NHMRC and Universities Australia Australian Code for the Responsible Conduct of Research (2007) and the CPMP/ICH Note for Guidance on Good Clinical Practice.